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Immigration Act 2009

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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1 Title

This Act is the Immigration Act 2009.

2 Commencement

(1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council, except as provided in subsections (2) to (5).

(2) Sections 30, 31, 60, 100, 104, 111, 120, 149(1)(e), 278, 283 to 291, 312, and 400(l) come into force on a date to be appointed by the Governor-General by Order in Council (being a date not earlier than the date appointed under subsection (1)); and 1 or more orders may be made appointing different dates for different provisions.

(3) Section 477 comes into force on a date to be appointed by the Governor-General by Order in Council (being a date not earlier than the second day after the date on which this Act receives the Royal assent).

(4) Sections 475, 476, and 478 come into force on the day after the date on which this Act receives the Royal assent.

(5) Section 474 comes into force on the day after the date on which the Immigration Act 2009 Amendment Act 2010 receives the Royal assent.

Section 2(1): remaining sections not in force immediately before 2 am on 29 November 2010 (except sections 30, 31, 60, 100, 104, 111, 120, 149(1)(e), 278, 283–291, 312, and 400(l)) brought into force, at 2 am on 29 November 2010, by clause 2(2) of the Immigration Act 2009 Commencement Order 2010 (SR 2010/185).

Section 2(1): amended, on 9 April 2010, by section 4(1) of the Immigration Act 2009 Amendment Act 2010 (2010 No 10).

Section 2(2): sections 30, 31, and 149(1)(e) brought into force, on 20 December 2010, by clause 2 of the Immigration Act 2009 Commencement Order (No 2) 2010 (SR 2010/410).

Section 2(2): sections 60, 111, 120, and 288–291 brought into force, on 20 October 2011, by clause 2 of the Immigration Act 2009 Commencement Order 2011 (SR 2011/316).

Section 2(2): sections 278, 283–287, and 312 brought into force, on 3 September 2012, by the Immigration Act 2009 Commencement Order 2012 (SR 2012/197).

Section 2(3): section 477 brought into force, on 2 August 2010, by clause 2(1) of the Immigration Act 2009 Commencement Order 2010 (SR 2010/185).

Section 2(5): added, on 9 April 2010, by section 4(2) of the Immigration Act 2009 Amendment Act 2010 (2010 No 10).

Part 1
Preliminary provisions

3 Purpose

(1) The purpose of this Act is to manage immigration in a way that balances the national interest, as determined by the Crown, and the rights of individuals.

(2) To achieve this purpose, the Act establishes an immigration system that—

(a) requires persons who are not New Zealand citizens to—

(i) hold a visa to travel to New Zealand; and

(ii) hold a visa and be granted entry permission to stay in New Zealand; and

(b) provides for the development of immigration instructions (which set rules and criteria for the grant of visas and entry permission) to meet objectives determined by the Minister, which may include objectives such as—

(i) contributing to the New Zealand workforce through facilitating access to skills and labour; and

(ii) supporting families; and

(c) allows for the management of persons crossing the border by setting requirements that apply to—

(i) persons arriving, or intending to arrive, in New Zealand; and

(ii) persons departing, or intending to depart, from New Zealand; and

(d) provides a process for implementing specified immigration-related international obligations; and

(e) includes mechanisms to ensure that those who engage with the immigration system comply with its requirements, including mechanisms that—

(i) enable immigration officers to gather information in relation to visa holders, employers, and education providers to determine compliance with obligations in respect of the system; and

(ii) prescribe the system for the deportation of people who are not New Zealand citizens and who fail to comply with immigration requirements, commit criminal offences, or are considered to pose a threat or risk to security; and

(f) establishes a specialist tribunal to consider appeals against decisions made under this Act and to consider humanitarian appeals; and

(g) supports the settlement of migrants, refugees, and protected persons.

Section 3(2)(c): replaced, on 28 September 2017, by section 266 of the Intelligence and Security Act 2017 (2017 No 10).

4 Interpretation

In this Act, unless the context otherwise requires,—

absolute discretion has the meaning given to it in section 11

address for service has the meaning given to it by section 387

administrative error, in relation to the granting of a visa or entry permission, has the meaning given to it in section 8

airport has the meaning given to it in section 2 of the Airport Authorities Act 1966

appeal on humanitarian grounds means an appeal to the Tribunal against liability for deportation on the grounds set out in section 207

appeal on the facts means an appeal against liability for deportation on a ground set out in section 202

appeals body means 1 or more of the following bodies established or continued under the former Act, as the case may be:

(a) the Residence Review Board:

(b) the Removal Review Authority:

(c) the Refugee Status Appeals Authority:

(d) the Deportation Review Tribunal

approved system means a system, including an electronic system, approved by the chief executive for the purpose of—

(a) providing information to the chief executive under section 96; or

(b) giving notice under section 97(2) of a decision made under section 97(1); or

(c) giving notice under section 97A(3) of a decision made under section 97A(1)

arrival hall means a place licensed under section 12 of the Customs and Excise Act 1996 for the processing of persons arriving in New Zealand

biometric information, in relation to a person, means information that comprises—

(a) 1 or more of the following kinds of personal information:

(i) a photograph of all or any part of the person's head and shoulders:

(ii) impressions of the person's fingerprints:

(iii) a scan of the person's irises; and

(b) a record, whether physical or electronic, of the personal information that is capable of being used for biometric matching

border requirement means a requirement, responsibility, or obligation under any of sections 103 to 106, 119, and 120

carrier, in relation to a craft,—

(a) means the owner or charterer of the craft; and

(b) if the owner or charterer is not in New Zealand, includes the agent in New Zealand of the owner or charterer; and

(c) if there is no agent in New Zealand, includes the person in charge of the craft

certificate of identity—

(a) means a document (other than a passport) issued by the government of any country to any person for the purposes of facilitating that person's entry into or exit from any country, being a document that—

(i) purports to establish the identity but not the nationality of that person; and

(ii) confers on that person a right to enter the country whose government has issued the document; and

(b) includes—

(i) any emergency travel document or refugee travel document issued under the Passports Act 1992; and

(ii) any travel document issued by any international organisation for the time being specified by the Minister for the purpose of this definition

chief executive means—

(a) the chief executive of the Department:

(b) when used in relation to a relevant agency, the chief executive of that agency (including, where appropriate, the Commissioner of Police, the Chief of Defence Force, and the General Manager of the Aviation Security Service)

claim means a claim by a person in New Zealand for recognition, as the case may be, as—

(a) a refugee in New Zealand under the Refugee Convention:

(b) a protected person in New Zealand under the Convention Against Torture:

(c) a protected person in New Zealand under the Covenant on Civil and Political Rights

claimant—

(a) means a person who has made a claim; but

(b) does not include a person whose claim has been finally determined (within the meaning of section 128)

classified information has the meaning given to it by section 7(1)

commercial craft means a craft that travels for a commercial purpose or as part of a commercial operation

compulsion order means an order made by a District Court Judge under section 290(1) requiring a person to allow the collection of specified biometric information from him or her

compulsory education means education that is—

(a) provided at any primary, intermediate, composite, secondary, or special school (within the meaning of the Education Act 1989), whether state, private, or integrated, or at a partnership school kura hourua (within the meaning of section 2(1) of that Act); and

(b) provided to a person at any time during the period beginning on the person's fifth birthday and ending on 1 January following the person's 19th birthday

conditions include conditions precedent as well as conditions subsequent (whether imposed by an immigration officer, the Minister, or the Tribunal)

contact address has the meaning given to it by section 387A

Convention Against Torture means the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 10 December 1984

counsel assisting the court means a person appointed as counsel assisting the court under section 269

course of study—

(a) means—

(i) any course of tuition or instruction for people entitled to free enrolment and education under section 3 of the Education Act 1989, conducted by any primary, intermediate, composite, secondary, or special school, whether state, private, or integrated, or by a partnership school kura hourua (within the meaning of section 2(1) of that Act); and

(ii) any other course of tuition or instruction conducted by any school, college, institute, university, or other body or person, and leading to any educational or vocational qualification the attainment of which by any person would be likely to enhance the employment prospects of that person, either generally or in respect of any particular profession or occupation; and

(iii) in relation to any particular person, any other course of tuition or instruction if the undertaking of that course is the principal reason why that person wishes to be or is in New Zealand; but

(b) does not include any course of tuition or instruction excluded, or excluded for a particular purpose, from this definition by immigration instructions

Covenant on Civil and Political Rights means the International Covenant on Civil and Political Rights done at New York on 16 December 1966

craft means any form of aircraft, ship, or other vehicle or vessel capable of being or intended to be used to transport any person to or from New Zealand from or to any country outside New Zealand

crew, in relation to a craft,—

(a) means every person employed or engaged in working or providing a service in or on the craft; and

(b) includes the person in charge of the craft

customs officer has the meaning given to it by section 2(1) of the Customs and Excise Act 1996

Department means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

departure hall means a place licensed under section 12 of the Customs and Excise Act 1996 for the processing of persons departing from New Zealand

dependent child, in relation to any person, means a child under 18 years of age who is not married or in a civil union and who is dependent on that person, whether or not the child is a child of that person

deportation liability notice means a notice that states the matters referred to in section 171, and, for the purposes of serving a notice, includes a copy of the notice

deportation order—

(a) means an order containing the information described in section 176 that, when served on a person in accordance with section 175, authorises the person's deportation to be executed; and

(ab) for the purposes of serving or executing an order described in paragraph (a), includes a copy of the order; and

(b) includes an Order in Council made under section 163

designated agency means the agency designated by the Prime Minister under section 264(1) for the purpose of recognising lawyers as special advocates

disembarkation means the process of physically leaving a craft, whether onto land or otherwise

education provider means a provider of a course of study, and—

(a) in relation to any institution controlled by a board of trustees constituted under Part 9 of the Education Act 1989, means that board:

(b) in relation to any institution controlled by the chief executive of the department of State that, with the authority of the Prime Minister, is responsible for the administration of the Education Act 1989, means that chief executive:

(c) in relation to any university, means the appropriate university council:

(d) in any other case, means the institution, body, or person that or who is entitled to the fees payable by or on behalf of the persons undertaking the course, or that or who would be so entitled if any such fees were payable

employee means a person who does work for an employer (whether under a contract of service or a contract for services)

employer means a person who employs or engages a person to do work, whether under a contract of service or a contract for services

entry permission is the permission that the following persons are required to obtain before being allowed to enter New Zealand:

(a) a person who is not a New Zealand citizen:

(b) a New Zealand citizen who is a national of 1 or more other countries and who wishes to enter New Zealand other than as a New Zealand citizen

epidemic management notice means a notice under section 8(1) of the Epidemic Preparedness Act 2006 stating that the application of this Act is modified in order to deal with the practical effects of the outbreak of the disease referred to in the notice

excluded person means a person to whom section 15 or 16 applies

exclusive economic zone of New Zealand has the same meaning as in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

execute, in relation to a deportation order, has the meaning described in section 178(2)

former Act means the Immigration Act 1987

government agency—

(a) means—

(i) a government department named in Schedule 1 of the State Sector Act 1988; or

(ii) a Crown entity (within the meaning of section 7(1) of the Crown Entities Act 2004); and

(b) includes the New Zealand Police

grant, in relation to any visa, or entry permission, includes the situation where this Act or any regulations made under this Act deems a grant of the relevant visa, or entry permission, to occur

holder, in relation to a visa granted under this Act,—

(a) means the person in respect of whom the visa is granted; but

(b) does not include a person whose visa has expired or been cancelled

immigration control area means an area or place designated as such under section 382

immigration instructions—

(a) means immigration instructions certified under section 22; and

(b) includes residence instructions, temporary entry instructions, and transit instructions

immigration officer means an immigration officer designated under section 388, and includes the chief executive

immigration status means the status of a person under this Act, being whether the person—

(a) holds a visa and, if so, what class and type of visa the person holds, and any conditions of the visa; or

(b) is—

(i) lawfully in New Zealand and, if so, what class and type of visa the person holds, and any conditions of the visa; or

(ii) unlawfully in New Zealand (within the meaning of section 9)

imprisonment means any form of detention or custody whereby a person is deprived of liberty for a continuous period, including home detention, detention or custody in a psychiatric institution or hospital, and military custody; but does not include detention or custody under this Act

infringement fee, in relation to an infringement offence, means the fee set in respect of that offence by regulations made under section 400

infringement offence has the meaning given to it by section 359

invitation to apply means an invitation to apply for a visa, as described in section 94

leave New Zealand means, except in the circumstances specified in section 121, leave New Zealand for a destination in another country

mass arrival group has the meaning given to it by section 9A

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

New Zealand means any land territory within the territorial limits of New Zealand; and includes—

(a) the internal waters of New Zealand (as defined in section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977); and

(b) the Ross Dependency (including any ice shelf); and

(c) for the purposes of sections 21(a), 22(1)(c)(ii), 73(d), 74(1)(b)(ii), 77(4)(a), 277, 277A, and 382(1), the territorial sea of New Zealand; and

(d) for the purposes of section 283(2)(a), the area of sea adjacent to New Zealand and bounded by the outer limits of the contiguous zone of New Zealand (as defined in section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977)

New Zealand citizen means a person who has New Zealand citizenship as provided in the Citizenship Act 1977 or the Citizenship (Western Samoa) Act 1982

onshore, in relation to an applicant for a visa, means that the applicant is in New Zealand other than in an immigration control area

operator—

(a) in relation to a port, means—

(i) the owner of the port; or

(ii) if the owner is not responsible for the operation or management of the port, the manager of the port or any other person who is, for the time being, responsible for the operation or management of the port:

(b) in relation to an airport,—

(i) means a local authority for the time being authorised under section 3 of the Airport Authorities Act 1966 to operate or manage the airport; and

(ii) includes any person or association of persons or airport company authorised under section 3(3) of the Airport Authorities Act 1966 to exercise the powers or functions of a local authority under that section

passenger, in relation to a craft, means a person, other than a member of the crew, who is carried in or on the craft with the consent of the carrier, or the person in charge, of the craft

passport means a document that is issued by or on behalf of the government of any country and that is recognised by the Government of New Zealand as a passport, being a document that—

(a) purports to establish the identity and nationality of the holder; and

(b) confers on the holder the right to enter the country the government of which has issued the document; and

(c) has not expired

permanent resident means the holder of a permanent resident visa

person in charge, in relation to a craft, means the master, captain, pilot in command, driver, or other person for the time being responsible for the craft

personal service, in relation to any document or notice served or to be served on a person, means personal delivery of the document or notice to that person or, where the person refuses to accept the document or notice, the bringing of the document or notice to that person's attention

port—

(a) means any defined area of land and water intended or designed to be used either wholly or partly for the berthing, departure, movement, and servicing of ships; and

(b) includes any buildings, installations, and equipment on or adjacent to any such area used in connection with the port or its administration

prescribed means prescribed by regulations made under this Act

proceedings involving classified information has the meaning given to it in section 7(4)

protected person means a person recognised as a protected person in New Zealand under section 130 or 131

refugee means a person recognised as a refugee in New Zealand under section 126 or 129

refugee and protection officer means a person designated under section 390 as a refugee and protection officer

Refugee Convention—

(a) means the United Nations Convention Relating to the Status of Refugees, done at Geneva on 28 July 1951; and

(b) includes the Protocol Relating to the Status of Refugees done at New York on 31 January 1967

registered post includes any postal or courier service where delivery to the address is recorded

relevant agency, in relation to any classified information, means any of the following agencies that hold, were the source of, or were provided with, that classified information:

(a) Aviation Security Service:

(b) Civil Aviation Authority of New Zealand:

(c) Department of Corrections:

(d) Department of Internal Affairs:

(e) Department of Labour:

(f) Government Communications Security Bureau:

(g) Maritime New Zealand:

(h) Ministry of Agriculture and Forestry:

(i) Ministry of Fisheries:

(j) Ministry of Foreign Affairs and Trade:

(k) New Zealand Customs Service:

(l) New Zealand Defence Force:

(m) New Zealand Police:

(n) New Zealand Security Intelligence Service:

(o) a government agency established in substitution for or set up to take over any function of a department or agency listed in paragraphs (a) to (n)

residence class visa means a permanent resident visa or a resident visa

residence instructions means immigration instructions certified under section 22 that relate to the grant of residence class visas

resident means the holder of a resident visa

responsible adult means the adult designated or nominated under section 375

restricted temporary entry instructions means temporary entry instructions that require, in relation to the type of visa to which the instructions relate, that any decision made on an application for that type of visa, or on an application for entry permission in relation to that type of visa, must be made in terms of the temporary entry instructions applicable at the time the application for the visa was made, and any discretion exercised must be in terms of those instructions

review proceedings means proceedings—

(a) by way of an application for review under the Judicial Review Procedure Act 2016; or

(b) by way of an application for certiorari, mandamus, or prohibition; or

(c) by way of an application for a declaratory judgment

scheduled international service means a series of flights or voyages that are—

(a) performed by a craft for the transport of passengers, cargo, or mail between New Zealand and 1 or more points in any other country or territory, if the flights or voyages are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable; and

(b) operated in such a manner that each flight or voyage is open to use by members of the public

security—

(a) means—

(i) the defence of New Zealand:

(ii) the protection of New Zealand from acts of espionage, sabotage, and subversion, whether or not they are directed from or intended to be committed in New Zealand:

(iii) the identification of foreign capabilities, intentions, or activities in or relating to New Zealand that affect adversely New Zealand's international well-being, reputation, or economic well-being:

(iv) the protection of New Zealand from activities in or relating to New Zealand that—

(A) are influenced by any foreign organisation or any foreign person; and

(B) are clandestine or deceptive, or threaten the safety of any person; and

(C) affect adversely New Zealand's international well-being, reputation, or economic well-being:

(v) the prevention of any terrorist act and of any activity relating to the carrying out or facilitating of any terrorist act:

(vi) the prevention, investigation, and detection of organised crime, including transnational organised crime; and

(b) in an international security context, also includes the safety and stability of the international community, through co-operative measures such as international conventions and other arrangements or agreements between countries

special adviser means a person appointed as a special adviser under section 270

special advocate means a lawyer recognised as a special advocate under section 264

special direction means a direction given by the Minister in accordance with section 378

stowaway means a person who is carried in or on a craft without the consent of the carrier, or the person in charge, of the craft

study means undertake a course of study

subsequent claim means a claim (of whatever kind) under Part 5 by a person who has previously made a claim of any kind under that Part (or under Part 6A of the former Act) that has been finally determined (within the meaning of section 128 of this Act or section 129B of the former Act, as the case may be)

temporary entry class visa means a temporary visa, a limited visa, or an interim visa

temporary entry instructions—

(a) means immigration instructions that relate to the grant of temporary entry class visas; and

(b) includes restricted temporary entry instructions

territorial sea of New Zealand has the same meaning as in section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

transit instructions means immigration instructions that relate to the grant of transit visas

transit passenger means a person who arrives in New Zealand from another country while in transit to another overseas destination, not intending to enter or remain in New Zealand

transit period means the period prescribed in accordance with section 401(d) for the purpose of section 86A

travelling to New Zealand includes, but is not limited to, travelling to New Zealand from another country in transit to another destination outside New Zealand

Tribunal means the Immigration and Protection Tribunal established by section 217

turnaround means to effect, under section 178(2), the departure from New Zealand of a person to whom section 115 applies, as if the person were a person who had been served with a deportation order

unlawfully in New Zealand, in relation to a person, has the meaning given to it in section 9

visa—

(a) means an entry in the records of the Department—

(i) made in accordance with section 62; and

(ii) having the effect set out in section 43; and

(b) includes—

(i) any visa of a class specified in section 70; and

(ii) any visa deemed to be, or treated as being, held under this Act

visa waiver means a waiver under section 69 of the requirement to hold a visa permitting travel to New Zealand

warrant of commitment—

(a) means a warrant of commitment issued under section 317, 318, or 323; and

(b) includes—

(i) a mass arrival warrant issued under section 317B (in respect of all or specified members of a mass arrival group); and

(ii) a further warrant of commitment issued under section 317E(1)(a) (in respect of all or specified members of a mass arrival group)

work—

(a) means any activity undertaken for gain or reward; but

(b) does not include an activity excluded, or excluded for a particular purpose, from this definition by immigration instructions.

Section 4 **address for service**: inserted, on 7 May 2015, by section 4(8) of the Immigration Amendment Act 2015 (2015 No 48).

Section 4 **approved system**: replaced, on 28 September 2017, by section 267(1) of the Intelligence and Security Act 2017 (2017 No 10).

Section 4 **biometric information**: replaced, on 22 August 2017, by section 30 of the Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42).

Section 4 **chief executive** paragraph (b): replaced, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 4 **compulsory education** paragraph (a): amended, on 13 June 2013, by section 45(2) of the Education Amendment Act 2013 (2013 No 34).

Section 4 **contact address**: inserted, on 7 May 2015, by section 4(8) of the Immigration Amendment Act 2015 (2015 No 48).

Section 4 **course of study** paragraph (a)(i): amended, on 13 June 2013, by section 45(3) of the Education Amendment Act 2013 (2013 No 34).

Section 4 **deportation liability notice**: amended, on 7 May 2015, by section 4(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 4 **deportation order** paragraph (ab): inserted, on 7 May 2015, by section 4(3) of the Immigration Amendment Act 2015 (2015 No 48).

Section 4 **government agency** paragraph (b): replaced, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 4 **mass arrival group**: inserted, on 19 June 2013, by section 4(1) of the Immigration Amendment Act 2013 (2013 No 39).

Section 4 **New Zealand** paragraph (c): amended, on 7 May 2015, by section 4(4) of the Immigration Amendment Act 2015 (2015 No 48).

Section 4 **New Zealand address**: repealed, on 7 May 2015, by section 4(7) of the Immigration Amendment Act 2015 (2015 No 48).

Section 4 **review proceedings** paragraph (a): amended, on 1 March 2017, by section 24 of the Judicial Review Procedure Act 2016 (2016 No 50).

Section 4 **scheduled international service**: inserted, on 28 September 2017, by section 267(2) of the Intelligence and Security Act 2017 (2017 No 10).

Section 4 **transit passenger**: inserted, on 6 November 2015, by section 4(5) of the Immigration Amendment Act 2015 (2015 No 48).

Section 4 **transit period**: replaced, on 6 November 2015, by section 4(6) of the Immigration Amendment Act 2015 (2015 No 48).

Section 4 **warrant of commitment**: replaced, on 19 June 2013, by section 4(2) of the Immigration Amendment Act 2013 (2013 No 39).

5 Notifications

(1) Where this Act or regulations under this Act provide that any notice or other document must be served on or supplied to the Minister, it must be served or supplied in accordance with section 386(1).

(2) Where this Act or regulations under this Act provide that any notice or other document must be served on or supplied to an immigration officer or a refugee and protection officer, it must be served or supplied in accordance with section 386(2).

(3) Where this Act or any regulations under this Act provide that any notice or other document must be served on a person other than the Minister or a person referred to in subsection (2), the notice or other document must be served in accordance with section 386A(2).

(4) Where this Act or any regulations under this Act provide that any notice or other document must be supplied, notified, or in any other way given to a person other than the Minister or a person referred to in subsection (2), the notice or other document must be given or sent to the person in accordance with section 386A(3).

(5) Subsections (1) to (4) are subject to sections 386(8) and 387B.

Section 5(3): replaced, on 7 May 2015, by section 5 of the Immigration Amendment Act 2015 (2015 No 48).

Section 5(4): replaced, on 7 May 2015, by section 5 of the Immigration Amendment Act 2015 (2015 No 48).

Section 5(5): inserted, on 7 May 2015, by section 5 of the Immigration Amendment Act 2015 (2015 No 48).

6 How periods of time to be calculated

(1) A period of time prescribed in this Act for the making of an application under the Act must be calculated excluding any day that is—

(a) a public holiday or a Department holiday determined by the chief executive; and

(b) not a Saturday or Sunday.

(2) A period of time prescribed in this Act for the lodging of an appeal to the Tribunal must be calculated excluding—

(a) any day that is—

(i) a public holiday or a Department holiday determined by the chief executive; and

(ii) not a Saturday or Sunday; or

(b) if the Department is not the department referred to in clause 5 of Schedule 2, any day that is a public holiday and not a Saturday or Sunday, and—

(i) any day in the period beginning on 25 December in a year and ending on 2 January in the following year; and

(ii) if 1 January falls on a Friday, the following Monday; and

(iii) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and

(iv) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.

(3) Subsections (1) and (2) do not apply for the purposes of calculating working days under section 194(2) or 195(3).

Section 6(2)(b)(iii): replaced, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

Section 6(2)(b)(iv): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

7 Meaning of classified information and proceedings involving classified information

(1) In this Act, **classified information** means information that the chief executive of a relevant agency certifies in writing cannot be disclosed under this Act (except as expressly provided for) because—

(a) the information is information of a kind specified in subsection (2); and

(b) disclosure of the information would be disclosure of a kind specified in subsection (3).

(2) Information falls within subsection (1)(a) if it—

(a) might lead to the identification, or provide details, of the source of the information, the nature, content, or scope of the information, or the nature or type of the assistance or operational methods available to the relevant agency; or

(b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, in pursuance of any of the functions of the relevant agency; or

(c) has been provided to the relevant agency by the government of another country, an agency of a government of another country, or an international organisation, and is information that cannot be disclosed by the relevant agency because the government, agency, or organisation from which the information has been provided will not consent to the disclosure.

(3) Disclosure of information falls within subsection (1)(b) if the disclosure would be likely—

(a) to prejudice the security or defence of New Zealand or the international relations of New Zealand; or

(b) to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by the government of another country, an agency of a government of another country, or an international organisation; or

(c) to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or

(d) to endanger the safety of any person.

(4) In this Act, **proceedings involving classified information** means any proceedings in which classified information—

(a) was relied on in making the decision appealed against or subject to review proceedings (including a decision of the Tribunal); or

(b) is first raised or proposed to be raised in the course of an application to the Tribunal or on appeal or in review proceedings; or

(c) is raised in an application under Part 9.

(5) A chief executive of a relevant agency must not delegate to any person the ability to certify information as classified information under subsection (1).

(6) Subsection (5) does not limit section 40 of the State Sector Act 1988.

8 Meaning of granting visa or entry permission as result of administrative error

(1) In this Act, a visa is granted as a result of an administrative error if—

(a) it is granted to a New Zealand citizen (unless the person is a New Zealand citizen entering New Zealand in the circumstances described in section 13(4)(b)); or

(b) it is granted to an excluded person (unless section 17 applies); or

(c) the person granting it intended to grant a visa of a type other than the one that was actually granted; or

(d) it is granted for a period exceeding the period specified in regulations or immigration instructions for visas of that type (unless the Minister or an immigration officer deliberately and properly granted it as an exception to the immigration instructions); or

(e) it is granted on the basis of the person holding a visa that was granted as a result of an administrative error; or

(f) it is granted in contravention of—

(i) a special direction; or

(ii) immigration instructions (unless the Minister or an immigration officer deliberately and properly granted it as an exception to immigration instructions); or

(iii) an instruction of a kind referred to in section 378(7).

(2) In this Act, entry permission is granted as a result of an administrative error if—

(a) it is granted to a New Zealand citizen (unless the person is a New Zealand citizen entering New Zealand in the circumstances described in section 13(4)(b)); or

(b) it is granted to an excluded person (unless section 17 applies); or

(c) it is granted in contravention of—

(i) a special direction; or

(ii) immigration instructions (unless the Minister or an immigration officer deliberately and properly granted it as an exception to immigration instructions); or

(d) it is granted on the basis of, or in conjunction with,—

(i) a visa that was itself granted on the basis of an administrative error; or

(ii) a visa that was granted for a period exceeding the period specified in immigration instructions for a visa of that type (unless the Minister or an immigration officer deliberately and properly granted the visa as an exception to the immigration instructions); or

(iii) a visa of a class or type other than that intended to be granted.

Compare: 1987 No 74 ss 19(4), 32(4)

Section 8(1)(d): amended, on 7 May 2015, by section 6 of the Immigration Amendment Act 2015 (2015 No 48).

9 Meaning of unlawfully in New Zealand (in relation to person who is not New Zealand citizen)

(1) In this Act, a person who is not a New Zealand citizen is **unlawfully in New Zealand** if the person is in New Zealand but—

(a) is not the holder of a visa granted under this Act; or

(b) has not been granted entry permission under this Act.

(2) A person's status as being unlawfully in New Zealand is calculated—

(a) as starting on the date the person arrived in New Zealand, if the person has never been lawfully in New Zealand since his or her arrival; or

(b) as starting on the day after the date on which the person's visa expired or was cancelled without another visa being granted; or

(ba) as starting on the day after the date on which a permit granted to the person under the former Act expired or was revoked without another permit being granted under that Act; or

(c) in accordance with sections 373 and 374, if—

(i) the person was born in New Zealand on or after 1 January 2006; and

(ii) he or she is not a New Zealand citizen.

Section 9(2)(ba): inserted, on 7 May 2015, by section 7 of the Immigration Amendment Act 2015 (2015 No 48).

9A Meaning of mass arrival group

(1) In this Act, **mass arrival group** means a group of more than 30 people, each of whom falls within 1 or more of the classes of person described in paragraphs (a) to (f) of section 115(1), who arrive in New Zealand—

(a) on board the same craft; or

(b) on board the same group of craft at the same time; or

(c) on board the same group of craft and within such a time period or in such circumstances that each person arrived, or intended to arrive, in New Zealand as part of the group.

(2) In subsection (1), **craft** does not include a craft travelling to New Zealand in the course of a scheduled international service.

Section 9A: inserted, on 19 June 2013, by section 5 of the Immigration Amendment Act 2013 (2013 No 39).

Section 9A(2): amended, on 28 September 2017, by section 268 of the Intelligence and Security Act 2017 (2017 No 10).

10 Meaning of deported

(1) For the purposes of this Act, a person is deported from a country if the person leaves the country (whether or not at the expense of the government of the country) and an order for the person's departure made by the government of the country, an authorised official of the country, or a judicial authority in the country, is in force.

(2) For the purposes of this Act, a person is not deported from a country merely because the person is surrendered to another country in accordance with a request for the extradition of the person to that country.

(3) For the purposes of this Act, a person is deported from New Zealand if—

(a) the person leaves New Zealand (whether or not at the expense of the Government of New Zealand)—

(i) on or after the date on which a deportation order may be served on the person under section 175A; or

(ii) after a deportation order has been served on the person; or

(iii) while he or she is subject to a prohibition on entry to New Zealand under section 179 or 180; or

(b) the person is served with a deportation order when he or she is outside New Zealand; or

(c) the person was deported from New Zealand under the former Act.

Section 10(3)(a)(i): amended, on 7 May 2015, by section 8 of the Immigration Amendment Act 2015 (2015 No 48).

11 Meaning of absolute discretion of the decision maker

(1) If a provision of this Act provides that a matter or decision is in the **absolute discretion** of the decision maker concerned, it means that—

(a) the matter or decision may not be applied for; and

(b) if a person purports to apply for the matter or decision, there is no obligation on the decision maker to—

(i) consider the purported application; or

(ii) inquire into the circumstances of the person or any other person; or

(iii) make any further inquiries in respect of any information provided by, or in respect of, the person or any other person; and

(c) whether the purported application is considered or not,—

(i) the decision maker is not obliged to give reasons for any decision relating to the purported application, other than the reason that this section applies; and

(ia) privacy principle 6 (which relates to access to personal information and is set out in section 6 of the Privacy Act 1993) does not

apply to any reasons for any decision relating to the purported application; and

(ii) section 27 of this Act and section 23 of the Official Information Act 1982 do not apply in respect of the purported application.

(2) Subsection (1)(c)(ia) applies to any decision made in relation to a purported application, whether the decision was made before or after the commencement of that subsection.

Compare: 1987 No 74 ss 7(4), 12(4), 17(2), 25(3), 34B(3), 35A(2), 58(5), 130(6)

Section 11(1)(c)(ia): inserted, on 7 May 2015, by section 9(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 11(2): inserted, on 7 May 2015, by section 9(2) of the Immigration Amendment Act 2015 (2015 No 48).

12 Act binds the Crown

This Act binds the Crown.

Part 2
Core provisions and matters in relation to decision making

Eligibility to be in or enter New Zealand

13 New Zealand citizens may enter and be in New Zealand at any time

(1) For the purposes of this Act, every New Zealand citizen has, by virtue of his or her citizenship, the right to enter and be in New Zealand at any time.

(2) However, to establish his or her right to enter New Zealand, a New Zealand citizen must prove his or her citizenship and establish his or her identity by complying with border requirements.

(3) Nothing in this Act (other than subsection (2)) abrogates the right declared in subsection (1), and—

(a) no provision of this Act that is inconsistent with that right applies to a New Zealand citizen; and

(b) no New Zealand citizen is liable under this Act to deportation from New Zealand in any circumstances.

(4) Without limiting subsection (3), no New Zealand citizen—

(a) requires a visa or entry permission; or

(b) may hold a visa, or be granted entry permission, except a New Zealand citizen who—

(i) is a national of 1 or more other countries; and

(ii) wishes to enter New Zealand other than as a New Zealand citizen; and

(iii) has not been granted New Zealand citizenship, been registered as a New Zealand citizen by descent under section 7(2) of the Citizenship Act 1977, or been issued with an evidentiary certificate under section 21 of the Citizenship Act 1977 confirming that he or she is a New Zealand citizen.

Compare: 1987 No 74 s 3

14 Persons other than New Zealand citizens must hold visa to travel to and be in New Zealand

(1) A person who is not a New Zealand citizen may—

(a) travel to New Zealand only if the person—

(i) is the holder of a visa granted under this Act and the travel is consistent with the conditions of the visa; or

(ii) is a person to whom a visa waiver applies (whether authorised by regulation or special direction); and

(b) enter and be in New Zealand only if the person is the holder of a visa granted under this Act and he or she has been granted entry permission.

(2) To avoid doubt, the fact that an application for a visa has been made by or for any person who is onshore does not—

(a) render the person's presence in New Zealand lawful; or

(b) give the person a right to remain in New Zealand while the application is considered; or

(c) give the person a right to apply for or be granted any other visa pending determination of the application; or

(d) inhibit any deportation procedures under this Act that may apply to the person.

(3) This Act applies subject to—

(a) sections 90 to 96 of the Extradition Act 1999; and

(b) sections 150 to 155 of the International Crimes and International Criminal Court Act 2000.

Compare: 1987 No 74 s 4

Excluded persons

15 Certain convicted or deported persons not eligible for visa or entry permission to enter or be in New Zealand

(1) No visa or entry permission may be granted, and no visa waiver may apply, to any person—

(a) who, at any time (whether before or after the commencement of this section), has been convicted of an offence for which the person has been

sentenced to imprisonment for a term of 5 years or more, or for an indeterminate period capable of running for 5 years or more; or

(b) who, at any time in the preceding 10 years (whether before or after the commencement of this section), has been convicted of an offence for which the person has been sentenced to imprisonment for a term of 12 months or more, or for an indeterminate period capable of running for 12 months or more; or

(c) who is subject to a period of prohibition on entry to New Zealand under section 179 or 180; or

(d) who at any time (whether before or after the commencement of this section) has been removed or deported from New Zealand under any enactment; or

(e) who is excluded from New Zealand under any enactment; or

(f) who has, at any time, been removed, excluded, or deported from another country.

(2) Paragraphs (a) and (b) of subsection (1) apply—

(a) whether the sentence is of immediate effect or is deferred or is suspended in whole or in part:

(b) where a person has been convicted of 2 or more offences on the same occasion or in the same proceedings, and any sentences of imprisonment imposed in respect of those offences are cumulative, as if the offender had been convicted of a single offence and sentenced for that offence to the total of the cumulative sentences:

(c) where a person has been convicted of 2 or more offences, and a single sentence has been imposed in respect of those offences, as if that sentence had been imposed in respect of a conviction for a single offence.

(3) Subsection (1)(d) does not apply to a person who—

(a) has been deported from New Zealand under section 158 of the Shipping and Seamen Act 1952; or

(b) was subject to a removal order under section 54 of the former Act, if the removal order has expired or been cancelled; or

(c) was deported under this Act but is not, or is no longer, subject to a period of prohibition on entry under section 179 or 180; or

(d) has been deported from New Zealand under section 20 of the Immigration Act 1964 on the grounds of being convicted of an offence against section 14(5) or 15(5) of that Act.

(4) This section is subject to section 17.

Compare: 1987 No 74 s 7(1)(a)–(d), (2)

Section 15(3)(c): replaced, on 7 May 2015, by section 10 of the Immigration Amendment Act 2015 (2015 No 48).

16 Certain other persons not eligible for visa or entry permission

(1) No visa or entry permission may be granted, and no visa waiver may apply, to any person who—

(a) the Minister has reason to believe—

(i) is likely to commit an offence in New Zealand that is punishable by imprisonment; or

(ii) is, or is likely to be, a threat or risk to security; or

(iii) is, or is likely to be, a threat or risk to public order; or

(iv) is, or is likely to be, a threat or risk to the public interest; or

(b) is a member of a terrorist entity designated under the Terrorism Suppression Act 2002.

(2) This section is subject to section 17.

Compare: 1987 No 74 s 7(1)(e)–(i)

17 Exceptions to non-eligibility for visa or entry permission

(1) Despite sections 15 and 16, a visa and entry permission may be granted to any person—

(a) in accordance with a special direction; or

(b) in accordance with section 83.

(2) Despite sections 15 and 16,—

(a) entry permission must be granted to—

(i) the holder of a permanent resident visa; and

(ii) the holder of a resident visa granted in New Zealand; and

(iii) the holder of a resident visa arriving in New Zealand for a second or subsequent time as the holder of the visa:

(b) a visa and entry permission must be granted to a person who is for the time being entitled to any immunity from jurisdiction by or under the Diplomatic Privileges and Immunities Act 1968 (other than a person referred to in section 10D(2)(d) of that Act) or the Consular Privileges and Immunities Act 1971.

(3) A decision to grant a visa and entry permission under subsection (1) is in the absolute discretion of the decision maker.

Compare: 1987 No 74 ss 7(3), (4), 11(1)(a)

Persons unlawfully in New Zealand

18 Obligation of persons unlawfully in New Zealand to leave New Zealand

(1) A person who is unlawfully in New Zealand has an obligation to leave New Zealand.

(2) The obligation under subsection (1) arises whether or not the person is aware of the obligation, or of the implications of not meeting it, and—

(a) that obligation, and any liability of the person to deportation or other action under this Act, is not affected by any failure or alleged failure of the chief executive to communicate the obligation and related implications under section 19; but

(b) nothing in paragraph (a) prevents any action from being brought in respect of such a failure or alleged failure in proceedings that are not directed towards preventing the deportation of any person.

Compare: 1987 No 74 s 45

19 Duty of chief executive to communicate obligation to leave New Zealand

(1) The chief executive must communicate to persons who are seeking visas to come to New Zealand or visas to be in New Zealand—

(a) the obligation to leave New Zealand created by section 18; and

(b) that a person who fails to meet that obligation is liable for deportation.

(2) Without limiting the means by which the chief executive may communicate those matters, he or she must provide the relevant information required by subsection (1)—

(a) at offices where visas are granted, by way of notices that can be readily seen by persons to whom it is likely to be of relevance:

(b) on application forms for visas:

(c) in immigration control areas, by way of notices that can be readily seen by all arriving temporary entrants:

(d) on informational material provided by the Department to persons who are interested in coming to New Zealand.

(3) The chief executive may communicate the information in 1 or more languages as he or she thinks fit.

(4) Any temporary entry class visa granted to any person that is evidenced by an endorsement in the holder's passport or certificate of identity must contain words to the effect that the person must leave New Zealand before expiry of the visa, or face deportation.

Compare: 1987 No 74 s 46

Section 19(2)(c): amended, on 7 May 2015, by section 11 of the Immigration Amendment Act 2015 (2015 No 48).

20 No right for person unlawfully in New Zealand to apply for visa

No person who is unlawfully in New Zealand may apply for a visa and, where any such person purports to apply for a visa, it is a matter for the absolute discretion of the Minister.

Compare: 1987 No 74 ss 17(2), 25(3)

21 No right for person unlawfully in New Zealand to work or study

A person who is unlawfully in New Zealand may not—

(a) work in New Zealand or in the exclusive economic zone of New Zealand; or

(b) study in New Zealand, except in compulsory education (but subject to the Education Act 1989).

Immigration instructions

22 Immigration instructions

(1) The Minister may certify immigration instructions relating to—

(a) residence class visas, temporary entry class visas, and transit visas:

(b) entry permission:

(c) conditions relating to resident visas, temporary entry class visas, and transit visas, including, without limitation, conditions relating to—

(i) travel to New Zealand:

(ii) the holder's ability to work or study in New Zealand or in the exclusive economic zone of New Zealand:

(d) the periods for which each type of temporary entry class visa may be granted:

(e) the types of temporary visas that may be granted, and the name and description of each type.

(2) Immigration instructions take effect from—

(a) the date they are certified; or

(b) a date specified in the instructions as being the date on which they come into effect, which must not be earlier than the date they are certified.

(3) Applications for temporary entry class visas or transit visas that are made before any relevant immigration instructions take effect may be determined in accordance with those immigration instructions when those instructions take effect.

(4) Subsection (3) does not apply to applications for temporary entry class visas subject to restricted temporary entry instructions.

(5) The kinds of matters that may constitute immigration instructions for the purposes of this Act are as follows:

(a) any general or specific objectives of immigration policy:

(b) any rules or criteria for determining the eligibility of a person for the grant of a visa of any class or type, or for entry permission, being rules or criteria relating to the circumstances of that person or of any other person (a **third party**) whose circumstances are relevant to the person's

eligibility, including (without limitation) rules and criteria about how any status or approval may be obtained or lost by the third party:

(c) any indicators, attributes, or other relevant information or matters that may or must be taken into account in assessing a person's eligibility for a visa or entry permission:

(d) any statement of, or rules or criteria or process for determining, the number or categories or ranking of persons or classes of persons whose applications for visas of any class or type or entry permission may be granted at any particular time or over any particular period:

(e) any rules or criteria for the lapsing of applications in respect of which no decision to grant a visa has been made:

(f) any matters relevant to balancing individual eligibility for a visa or entry permission against the overall objectives or requirements of immigration instructions:

(g) any requirements relating to documentation, consultation, or other evidence or information required to assess a person's eligibility for a visa or entry permission:

(h) any statement of the conditions or types of conditions that may be imposed upon a visa of any particular class or type, and the circumstances in which or classes of persons in relation to whom the conditions may be imposed:

(i) the nature and extent of the discretion that immigration officers may exercise in making a decision on any visa.

(6) Without limiting subsection (5), any rules or criteria relating to eligibility for a visa or entry permission—

(a) may include matters relating to—

(i) health:

(ii) character:

(iii) the immigration status of applicants for visas (whether currently or at any time in the past):

(iv) sponsorship:

(v) the provision of bonds:

(b) may, in respect of any 1 or more specified classes or categories of person who wish to apply for a visa,—

(i) include a requirement that persons of that class or category may apply for a visa only if invited to do so by the Minister or an immigration officer:

(ii) stipulate any period for which an expression of interest under section 92 will remain current:

(iii) set or indicate rules, criteria, or other relevant matters of the kinds specified in subsection (5)(a) to (g) that will or may apply for the purpose of determining whether an invitation to apply for a visa should be granted to any such person:

(iv) stipulate any time frame, or any method for determining the time frame, within which the relevant application must be made following the issue of an invitation to apply for a visa.

(7) Any conditions referred to in subsection (5)(h) that relate to resident visas (other than conditions relating to travel) must specify the maximum period, not exceeding 5 years, for which they may be imposed.

(8) Immigration instructions certified by the Minister under subsection (1)—

(a) are statements of government policy:

(b) are neither legislative instruments nor disallowable instruments for the purposes of the Legislation Act 2012 and do not have to be presented to the House of Representatives under section 41 of that Act.

Compare: 1987 No 74 s 13B

Section 22(5)(b): amended, on 7 May 2015, by section 12 of the Immigration Amendment Act 2015 (2015 No 48).

Section 22(8)(b): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

23 Immigration instructions classified as residence instructions, temporary entry instructions, or transit instructions

(1) The Minister must classify immigration instructions as—

(a) residence instructions; or

(b) temporary entry instructions (and, if appropriate, as restricted temporary entry instructions); or

(c) transit instructions.

(2) To avoid doubt, any temporary entry instructions are not residence instructions, regardless of whether the granting of a visa or entry permission under those instructions may affect eligibility for, or otherwise relate to, the grant of a residence class visa.

24 Immigration instructions for lapsing of applications for visas

(1) The Minister may certify in accordance with section 22 rules or criteria for the lapsing of applications in respect of which no decision to grant a visa has been made, or is likely to be made,—

(a) within any stipulated period or by any stipulated date; or

(b) by the date on which any relevant quota or limit set under immigration instructions for any particular period is reached; or

(c) by any other date on which some other specified event occurs or, as the case may be, has not occurred.

(2) Rules and criteria set under this section—

(a) may differ for different classes or categories of applications:

(b) may specify any stage of processing of an application that must be reached within any stipulated period or by any stipulated date if the application is not to lapse.

(3) The question whether an application meets any rules or criteria for lapsing set under this section is a matter for the discretion of the Minister or an immigration officer, and—

(a) no appeal lies against the decision of the Minister or the officer concerned, or the lapsing of the application, whether to the Minister, the Tribunal, a court, or otherwise; and

(b) no review proceedings may be brought in any court in respect of—

(i) the lapsing of an application for a visa under rules or criteria set under this section; or

(ii) the lapsing of an expression of interest in obtaining an invitation to apply for a visa.

(4) Any decision that an application for a residence class visa, or a temporary entry class visa of a type subject to restricted temporary entry instructions, will lapse must be made in accordance with the rules and criteria applicable at the time the application was made.

(5) If an application lapses, no further processing or decision in respect of that application is required.

(6) If an application lapses in accordance with rules and criteria set under this section, the chief executive must refund any application fee paid in respect of the application to the person who paid it, or a person authorised by that person to receive it.

(7) Nothing in this Act or in any other law or enactment entitles a person whose application has lapsed to recover from the Minister or the Department or any immigration officer any costs associated with the application, or any costs, damages, or compensation associated with the lapsing of the application, other than the application fee refundable under subsection (6).

(8) In this section (except subsections (6) and (7)), **application** includes an expression of interest under section 92 in obtaining an invitation to apply.

Compare: 1987 no 74 s 13BB

25 Publication of immigration instructions

(1) The chief executive must publish immigration instructions.

(2) The chief executive must ensure that copies of immigration instructions are available or readily obtainable for inspection, free of charge, at—

(a) offices of the Department; and

(b) New Zealand government offices overseas that deal with immigration matters.

(3) Nothing in subsection (2) requires the making available of information that could properly be withheld in accordance with the provisions of the Official Information Act 1982, were a request to be made for the information under that Act.

Compare: 1987 No 74 s 13A

Processing claims and applications for visas and entry permission

26 How claims and applications for visas and entry permission processed

(1) The order and manner of processing any application for a visa or entry permission is a matter for the discretion of the Minister or an immigration officer.

(2) Subsection (1) applies unless immigration instructions that particularly relate to the order or manner of processing applications for residence class visas, temporary entry class visas, or transit visas require otherwise.

(3) The order and manner of processing any claim is a matter for the discretion of a refugee and protection officer.

(3A) Subsection (3) applies unless regulations made under section 400 require otherwise.

(4) However, the chief executive may give general instructions to immigration officers and refugee and protection officers on the order and manner of processing any application or claim, or specified classes of application or claim, and, if so, an immigration officer or a refugee and protection officer must process an application or claim in accordance with those instructions.

(5) In giving any instructions, the chief executive may have regard to such matters as the chief executive thinks fit.

(6) General instructions may apply to any or all applications or claims regardless of the fact that—

(a) the general instructions may be different from those existing at the time that the applications or claims were made; or

(b) the general instructions may result in applications or claims being processed in a different order or manner than would otherwise have occurred.

(7) The question whether an application or claim is processed in an order and manner consistent with any general instructions is a matter for the discretion of the immigration officer or refugee and protection officer concerned, and—

(a) no appeal lies against his or her decision, whether to the Minister, the Tribunal, a court, or otherwise; and

(b) no review proceedings may be brought in any court in respect of—

(i) any general instructions; or

(ii) the application of any general instructions; or

(iii) any failure by the Minister or an immigration officer to process, or to continue to process, an application; or

(iv) any decision by the Minister or an immigration officer to process (including a decision to continue to process), or any decision not to process (including a decision not to continue to process), an application.

(8) The chief executive may make arrangements for providing assistance to the Minister, immigration officers, and refugee and protection officers in processing applications and claims.

(9) To avoid doubt, general instructions given under this section—

(a) are matters of rules and practice of the Department; and

(b) are not immigration instructions.

(10) To avoid doubt, nothing in this Act, or in any other law or enactment, requires an immigration officer or a refugee and protection officer to process an application or claim in any particular order or manner unless required to do so by—

(a) general instructions given under this section; or

(b) immigration instructions that particularly relate to the order or manner of processing applications for residence class visas, temporary entry class visas, or transit visas; or

(c) regulations made under section 400.

Compare: 1987 No 74 s 13BA

Section 26(3A): inserted, on 19 June 2013, by section 6(1) of the Immigration Amendment Act 2013 (2013 No 39).

Section 26(10)(b): amended, on 19 June 2013, by section 6(2) of the Immigration Amendment Act 2013 (2013 No 39).

Section 26(10)(c): inserted, on 19 June 2013, by section 6(3) of the Immigration Amendment Act 2013 (2013 No 39).

Reasons for decisions

27 Reasons for decisions must be given if visa or entry permission refused to certain persons

(1) Except as otherwise provided in this Act, where a person who applied for a visa or entry permission onshore or in an immigration control area so requests, an immigration officer (or, where the decision is the Minister's, the Minister) must give the reasons for any decision to—

(a) refuse to grant a visa to the person; or

(b) refuse to grant to the person a visa of a particular type; or

(c) refuse to grant entry permission to the person.

(2) The reasons must—

(a) be given in writing; and

(b) contain the information required under section 23 of the Official Information Act 1982 as if the reasons were given in response to a request to which that section applies.

(3) Subsection (1) is subject to section 40(3)(e) and (f).

Compare: 1987 No 74 s 36

Automated decision making and biometric information

28 Automated decision making in relation to visas, etc

(1) An automated electronic system that applies criteria predetermined in accordance with immigration instructions may be used by the Department to—

(a) rank an expression of interest:

(b) process, grant, or refuse to grant an invitation to apply for a visa:

(c) process an application for, grant (with or without conditions), or refuse to grant a visa:

(d) process an application for, grant, or refuse to grant entry permission.

(2) An automated electronic system may be used by the Department to process an application for, grant (with or without conditions), or refuse to grant an interim visa.

(3) Conditions imposed on visas granted by an automated electronic system may only be conditions that are specified in immigration instructions for a visa of the relevant class or type.

(4) However, nothing in this section prevents an immigration officer or the Minister from imposing further conditions, or varying or cancelling conditions under any of sections 50 to 55, on or in relation to a visa granted by way of an automated electronic system.

(5) Where a decision to grant or refuse to grant a visa or entry permission, or to issue or refuse to issue an invitation to apply for a visa, is made by way of an automated electronic system, that decision must for all purposes be treated as a decision of an immigration officer who is authorised to make the decision under this Act.

29 Automated decision making in advance passenger processing

The chief executive may make a decision under section 97(1) or 97A(1) by means of an automated electronic system that analyses the information (if any)

about a person that is held by the chief executive or to which the chief executive has access using criteria predetermined by the chief executive.

Section 29: amended, on 28 September 2017, by section 269 of the Intelligence and Security Act 2017 (2017 No 10).

29A Use of automated system to confirm New Zealand citizenship

(1) An automated electronic system that applies criteria predetermined by the chief executive may be used, for the purposes of this Act, to confirm a person's status as a New Zealand citizen.

(2) The automated electronic system may be used to confirm a person's status as a New Zealand citizen only if there is available at least 1 other way of confirming the person's status, and that other way involves confirmation by a person.

(3) A determination made using an automated electronic system must for all purposes be treated as a determination made by a person who is authorised to make the determination under this Act.

Section 29A: inserted, on 7 May 2015, by section 13 of the Immigration Amendment Act 2015 (2015 No 48).

30 Use of biometric information in decision making

Biometric information required from persons in accordance with this Act may be used to—

(a) establish a record of a person's identity; or

(b) establish or verify a person's identity; or

(c) assist in decision making under this Act.

31 Collection and storage of biometric information

(1) Biometric information collected under this Act may be collected, using an automated system or otherwise, by—

(a) an immigration officer or a refugee and protection officer; or

(b) an agent or person on behalf of an immigration officer or a refugee and protection officer.

(2) Biometric information must be dealt with in accordance with the Privacy Act 1993.

(3) Subsection (2) is for the avoidance of doubt.

32 Department to undertake privacy impact assessment

(1) The Department must complete a privacy impact assessment in respect of the collection and handling of biometric information under this Act to—

(a) identify the potential effects that the Act may have on personal privacy; and

(b) examine how any detrimental effects on privacy might be lessened.

(2) The Department must consult the Privacy Commissioner—

(a) on the terms of reference developed for the assessment; and

(b) when completing the assessment.

(3) The Department must review its privacy impact assessment if changes are made to this Act, regulations made under it, or operational policy in respect of the collection or handling of biometric information and, if the review establishes that new or increased privacy impacts have resulted from the changes, must—

(a) amend or replace the privacy impact assessment; and

(b) consult the Privacy Commissioner on the amended or replacement assessment.

(4) The Department must ensure the current privacy impact assessment is—

(a) available on the Department's Internet site; and

(b) available or readily obtainable for inspection, free of charge, at—

(i) offices of the Department; and

(ii) New Zealand government offices overseas that deal with immigration matters.

(5) Nothing in subsection (4) requires the making available of information that could properly be withheld in accordance with the provisions of the Official Information Act 1982, were a request to be made for the information under that Act.

Reliance on classified information in decision making

33 Classified information relating to security or criminal conduct may be relied on in decision making

(1) Classified information may be relied on in making decisions or determining proceedings under this Act if the Minister determines that the classified information relates to matters of security or criminal conduct.

(2) If subsection (1) applies, the Minister may—

(a) rely on the information to make a decision under Part 3, 4, or 6; or

(b) direct that the information be provided to a refugee and protection officer (who has been authorised by the chief executive to make decisions under Part 5 relying on classified information) so that the officer may rely on it to make—

(i) a decision under Part 5; or

(ii) an application to the Tribunal under that Part; or

(c) refer the information to the Tribunal or a court, as the case may be, if the information is first to be relied on—

(i) in an appeal to the Tribunal or the court; or

(ii) in an application to the Tribunal; or

(iii) in review proceedings; or

(d) refer the information to the chief executive so that he or she may make an application for a warrant of commitment, or an application or a response to an application for review or release, in accordance with section 325.

(3) Sections 34 to 42 apply, as appropriate, when decisions are made relying on classified information to which subsection (1) applies.

(4) Sections 240 to 244 and 252 to 270 apply to proceedings involving classified information to which subsection (1) applies.

34 Minister may receive briefing

(1) Where classified information may be relevant to a decision under this Act,—

(a) the Minister may request an oral or a written briefing from the chief executive of the relevant agency; and

(b) the Minister may seek the assistance of such security-cleared assistants as he or she thinks fit; and

(c) the content of the briefing is to be determined by the chief executive of the relevant agency.

(2) No person may be called to give evidence in any court or tribunal in relation to the content of the briefing or anything coming to his or her knowledge as a result of the briefing (including any record of an oral briefing), except as provided in sections 241(1) and 259(1).

35 Protection of classified information

(1) Classified information relied on for the purpose of making any decision or determining any proceedings under this Act must be kept confidential and must not be disclosed, except as provided in sections 241(1), 259(1), 267(4), 269(4), and 270(3).

(2) Subsection (1)—

(a) does not limit or affect the application of the Ombudsmen Act 1975, the Official Information Act 1982, or the Privacy Act 1993; but

(b) otherwise applies despite any other enactment or rule of law to the contrary.

(3) Neither the Tribunal nor any court may require or compel the chief executive of the relevant agency, the Minister, or any other person to disclose any classified information in any proceedings under this Act (but without derogating from sections 241(1) and 259(1)).

36 Classified information must be balanced

(1) The chief executive of a relevant agency who provides classified information to the Minister under this Act must ensure that—

(a) the information is provided in a manner that does not, by reason of the omission of any other relevant classified or non-classified information, give a misleading view of the information supplied; and

(b) any classified or non-classified information that is favourable to the person subject to the decision or proceedings is also provided; and

(c) any further classified information that becomes available and that is relevant to the decision or proceedings is provided.

(2) The obligation to provide further information ceases on the date—

(a) the decision concerned is made:

(b) a decision on the proceedings concerned is made.

37 Withdrawal or updating of classified information

(1) The chief executive of the relevant agency may at any time withdraw, update, or add to all or any part of any classified information provided to the Minister under this Act.

(2) If the classified information is updated or added to, the Minister must make a further determination under section 33(1) on whether the information may be relied on.

(3) If the Minister determines that the information may be—

(a) relied on before the Minister makes a decision under Part 3, 4, or 6, the Minister must, if the information is relevant to the decision being made, take that new or updated information into account in making the decision:

(b) relied on before a refugee and protection officer makes a decision under Part 5, the officer must, if the information is relevant to the decision being made, take the new or updated information into account in making the decision:

(c) raised in proceedings involving classified information,—

(i) the Tribunal or court must treat the new or updated information in the same way as classified information originally provided to it under section 241(1) or 259(1); and

(ii) the Tribunal must determine in relation to the new or updated information the matters set out in section 243(1)(a), (b), and (c).

(4) If the chief executive of the relevant agency withdraws any classified information,—

(a) the classified information must be kept confidential and must not be disclosed by the decision maker, the Tribunal, or the court (as the case may be); and

(b) the decision maker, the Tribunal, or the court must continue to make the decision or determine the proceedings—

(i) without regard to that classified information (but subject to section 243(2) in the case of the Tribunal); and

(ii) in the case of an appeal, a matter, or review proceedings, as if that information had not been available in making the decision subject to the appeal, matter, or review proceedings.

(5) The chief executive of the relevant agency may at any time direct any person to return classified information to the relevant agency.

38 Summary of allegations to be developed

(1) This section and section 39 apply where classified information is to be relied on, or may be relied on, in the making of any decision (a **relevant decision**) in relation to—

(a) an application for a visa, if the application is for—

(i) a residence class visa; or

(ii) a temporary visa or a limited visa, and the applicant is onshore; or

(b) a person's liability for deportation; or

(c) any matter to which Part 5 applies, if the decision is to be made by a refugee and protection officer.

(2) Before a relevant decision is made that relies on any classified information that is or may be prejudicial to the person who is the subject of the proposed decision,—

(a) the chief executive of the relevant agency and the Minister or the refugee and protection officer concerned, as the case may be, must agree a summary of the allegations arising from the classified information; and

(b) the Minister or the refugee and protection officer must forward the summary to the person who is the subject of the proposed decision for comment, and specify a time by which any comment may be provided.

(3) For the purposes of making a relevant decision, the classified information may be relied on only to the extent that the allegations arising from the information can be summarised without disclosing classified information that would be likely to prejudice the interests described in section 7(3).

(4) Nothing in subsection (2) requires the summary to—

(a) list any documents or other source material containing classified information; or

(b) detail the contents of any documents or other source material containing classified information; or

(c) specify the source of any documents or other source material containing classified information.

(5) A summary under this section must be updated, and the person affected provided with an updated summary, where—

(a) any classified information that was proposed to be relied on in making the decision is withdrawn (unless all of the classified information is withdrawn); or

(b) the chief executive of the relevant agency adds to or updates the classified information that will be relied on in making the decision.

(6) An updated summary must be prepared in the same way as if it were a summary prepared under subsection (2)(a).

39 Reasons, etc, to be given where prejudicial decision made using classified information

(1) Where a decision of a kind referred to in section 38(1) has been made relying on classified information, and the decision is prejudicial to the person concerned, then, subject to section 40, the person who is the subject of the decision must be informed of—

(a) the fact that classified information was relied on in making the decision; and

(b) the reasons for the decision (except to the extent that providing reasons would involve a disclosure of classified information that would be likely to prejudice the interests referred to in section 7(3)); and

(c) the appeal rights, if any, available in respect of the decision; and

(d) if appeal rights are available, the right to be represented by a special advocate.

(2) Reasons must—

(a) be given in writing; and

(b) contain the information required under section 23 of the Official Information Act 1982 as if the reasons were given in response to a request to which that section applies.

(3) The Minister or a refugee and protection officer, as the case may be, must also prepare a record of the reasons for the decision, including any reasons arising from the classified information, which may not be accessed or disclosed except in accordance with section 241(1), 259(1), or 267(4) or to the chief executive of the relevant agency.

40 Where classified information may be relied on without requirement for summary or reasons

(1) Subsection (2) applies to the Minister if—

(a) he or she is making a decision under this Act relying on classified information; and

(b) the decision is not a decision of a kind referred to in section 38(1).

(2) The Minister is not required to—

(a) provide potentially prejudicial information based on classified information to the person concerned for comment; or

(b) give reasons for the decision, and section 23 of the Official Information Act 1982 and section 27 of this Act do not apply in respect of the decision.

(3) Nothing in section 38 or 39 requires the making available of any classified information or a summary of the allegations arising from classified information, or the giving of reasons for decisions,—

(a) if the decision concerned is in the absolute discretion of the decision maker; or

(b) in relation to expressions of interest or invitations to apply for a visa; or

(c) to applicants for transit visas; or

(d) to applicants for temporary entry class visas who are outside New Zealand; or

(e) in relation to applications for visas made in an immigration control area or in a place designated by the chief executive under section 383; or

(f) in relation to applications for entry permission.

41 Declassification of classified information

(1) Subsection (2) applies to classified information if—

(a) it is relied on, or may be relied on, to make a decision or determine proceedings under this Act; and

(b) during the process of making the decision or determining the proceedings, the information is declassified.

(2) As from the date of declassification, the information is no longer subject to any of the confidentiality, process, or other requirements of this Act that apply to classified information or the users of the information.

(3) For the purposes of this section, information is declassified when the chief executive of the relevant agency certifies in writing that, as from a specified date, the classified information concerned is no longer classified information within the meaning of section 7.

42 No right of complaint to Inspector-General of Intelligence and Security

No complaint may be made to the Inspector-General of Intelligence and Security about any situation or set of circumstances relating to an act, omission, practice, policy, or procedure done, omitted, or maintained (as the case may be) in connection with a decision under this Act involving classified information (including a determination in proceedings involving classified information).

Part 3
Visas

Subpart 1—Visas generally

43 Effect of visa

(1) A visa (other than a transit visa) granted outside New Zealand indicates that—

(a) the holder of the visa has permission to—

(i) travel to New Zealand in accordance with the conditions of the visa (if any); and

(ii) apply for entry permission; and

(b) at the time the visa is granted, there is no reason to believe that the holder will be refused entry permission if the holder's travel is consistent with the conditions of the visa relating to travel; and

(c) if the holder is granted entry permission, the holder has permission to stay in New Zealand in accordance with the conditions of the visa (if any).

(2) A visa granted in an immigration control area indicates that the holder of the visa,—

(a) if granted entry permission, has permission to stay in New Zealand in accordance with the conditions of the visa (if any); and

(b) has permission to travel to New Zealand subsequently and apply for entry permission in accordance with the conditions of the visa (if any).

(3) A visa granted onshore indicates that the holder of the visa—

(a) has permission to stay in New Zealand in accordance with the conditions of the visa (if any); and

(b) has permission to travel to New Zealand subsequently and apply for entry permission in accordance with the conditions of the visa (if any).

(4) A transit visa indicates that the holder of the visa has permission to travel to New Zealand, and to remain, for no longer than the transit period,—

(a) on the craft concerned; or

(b) in an immigration control area; or

(c) in the custody of the Police.

44 Person may hold only 1 current visa

At any one time, a person may hold only 1 current visa.

45 Grant of visa generally matter of discretion

(1) No person is entitled to a visa as of right.

(2) In determining a visa application, the Minister or, subject to any special direction, an immigration officer, in his or her discretion,—

(a) may grant or refuse to grant a visa; and

(b) regardless of the class and type of visa that was applied for, may grant a visa of any class and type; and

(c) may impose conditions on the visa granted, or vary or waive conditions that would otherwise apply to it.

(3) This section applies unless any provision in this Act expressly provides otherwise.

Compare: 1987 No 74 ss 8–10, 35

46 Grant of visa does not guarantee entry permission

(1) The granting of a visa does not of itself entitle the holder to be granted entry permission.

(2) Subsection (1) applies except if the visa granted is—

(a) a permanent resident visa; or

(b) a resident visa, and the visa was granted in New Zealand.

47 Grant of visa may be conditional on payment of bond

(1) Before granting a visa to an applicant, the Minister or an immigration officer may require that a bond be paid in accordance with section 396.

(2) A bond required under subsection (1) may be—

(a) forfeited under section 397(1); or

(b) refunded in whole or in part under section 397.

(3) The fact that a bond is forfeited under section 397(1) (whether in whole or in part) does not affect other action taken, or that may be taken, in respect of a failure to comply with any conditions imposed on the visa concerned under sections 49 to 55.

48 Grant of visa may be conditional on sponsorship

(1) Before a visa is granted to an applicant, the applicant may be required to supply a written undertaking, in a form approved by the chief executive, by a person (the **sponsor**) relating to any specified matter or matters.

(2) The requirement to supply a written undertaking may be imposed by—

(a) immigration instructions, in relation to any class or type of visa; or

(b) the Minister or an immigration officer, in relation to any particular visa.

(3) Without limiting subsection (1),—

(a) the specified matter or matters in respect of the undertaking may relate to—

(i) employment of the applicant and any dependants of the applicant:

(ii) accommodation of the applicant and any dependants of the applicant:

(iii) maintenance (including the cost of any publicly funded services or benefits) of the applicant and any dependants of the applicant:

(iv) costs of repatriation or deportation of the applicant and any dependants of the applicant:

(b) an undertaking may relate to the sponsor—

(i) providing any matter directly; or

(ii) paying the costs of any matter, if the matter is provided by another person.

(4) A sponsor must be—

(a) a New Zealand citizen, permanent resident, or resident; or

(b) an organisation that is registered in New Zealand as a company, an incorporated society, or a charitable trust; or

(c) a government agency.

(5) A sponsor who is not a natural person must nominate an individual as the authorised contact for the purposes of the sponsorship.

(6) A sponsor must also be acceptable to the Minister or the immigration officer, or meet any other criteria required by the relevant immigration instructions, or both, as the case may be.

(7) It is a matter for the absolute discretion of the Minister or the immigration officer whether a person is acceptable as a sponsor, and no appeal lies against his or her decision, whether to any court, the Tribunal, the Minister, or otherwise.

Visa conditions

49 Visas may be subject to conditions

(1) Every visa other than a permanent resident visa is subject to such conditions (if any) as may be,—

(a) in the case of resident visas, specified in residence instructions relating to visas of that type, being the instructions applicable at the time the application for the visa was made:

(b) in the case of temporary entry class visas other than visas subject to restricted temporary entry instructions, specified in temporary entry instructions relating to visas of that class or a type of visa within that class, being instructions applicable at the time the visa was granted:

(c) in the case of temporary entry class visas subject to restricted temporary entry instructions, specified in temporary entry instructions applicable at the time the application for the visa was made:

(d) in the case of transit visas, specified in transit instructions applicable at the time the visa was granted:

(e) imposed by the Minister or an immigration officer under section 50, 51, 52, 53, or 54:

(ea) imposed by section 55:

(f) imposed by or under any other Act.

(2) The conditions of a visa relating to travel may—

(a) give permission to travel to New Zealand on a single journey, multiple journeys, or a set number of journeys; or

(b) give permission to travel to New Zealand for or within a specified time period; or

(c) expressly not authorise any further travel to New Zealand.

Section 49(1)(e): amended, on 7 May 2015, by section 14(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 49(1)(ea): inserted, on 7 May 2015, by section 14(2) of the Immigration Amendment Act 2015 (2015 No 48).

50 Conditions on resident visas

(1) On granting a resident visa as an exception to residence instructions, the Minister may—

(a) impose conditions in addition to those specified in the applicable residence instructions (if any):

(b) vary or waive conditions that would otherwise apply to a visa of that type.

(2) Following the grant of a resident visa, the Minister may, by special direction,—

(a) impose further conditions whether or not the conditions are specified in the applicable residence instructions (if any):

(b) vary or cancel conditions that would otherwise apply to the visa or were imposed under subsection (1).

(3) The Minister may also do 1 or more of the things in subsection (2) by agreement with the visa holder.

(4) A condition imposed, varied, waived, or cancelled under this section—

(a) must be notified to the visa holder by the Minister or an immigration officer; and

(b) takes effect—

(i) from the date the visa is granted, if the condition is imposed, varied, or waived when the visa is granted; or

(ii) from the date specified in the notice (being a date not earlier than the date of notification), in any other case.

(5) To avoid doubt,—

(a) subsection (2) applies whether the resident visa was granted as an exception to residence instructions or otherwise:

(b) nothing in this section allows the Minister to impose conditions on a permanent resident visa, whether at the time of or subsequent to granting the visa.

51 Resident visa holder may apply for variation of travel conditions

(1) A resident visa holder may apply, in the prescribed manner, for a variation of the conditions of his or her visa relating to travel to New Zealand.

(2) An immigration officer must determine the application in accordance with the residence instructions applicable at the time the application for the variation was made.

(3) However, the Minister may vary conditions of a visa under this section by special direction, as an exception to residence instructions.

52 Conditions on temporary entry class visas (other than those subject to restricted temporary entry instructions)

(1) On granting a temporary entry class visa, the Minister or an immigration officer may—

(a) impose conditions in addition to those specified in temporary entry instructions in relation to a visa of that class or type:

(b) vary or waive conditions that would otherwise apply to a visa of that class or type.

(2) Following the grant of a temporary entry class visa, the Minister or an immigration officer may—

(a) impose further conditions, whether or not the conditions are specified in the temporary entry instructions in relation to a visa of that class or type:

(b) vary or cancel conditions that would otherwise apply to a visa of that class or type or were imposed under subsection (1).

(3) The Minister or an immigration officer may also do 1 or more of the things in subsection (2) by agreement with the visa holder.

(4) A condition imposed, varied, waived, or cancelled under this section—

(a) must be notified to the visa holder by the Minister or an immigration officer; and

(b) takes effect—

(i) from the date the visa is granted, if the condition is imposed, varied, or waived when the visa is granted; or

(ii) from the date specified in the notice (being a date not earlier than the date of notification), in any other case.

(5) Nothing in this section applies to a temporary entry class visa that is subject to restricted temporary entry instructions.

53 Conditions on temporary entry class visas subject to restricted temporary entry instructions

(1) On granting a temporary entry class visa subject to restricted temporary entry instructions, as an exception to those instructions, the Minister may—

(a) impose conditions in addition to those specified in temporary entry instructions in relation to a visa of that type:

(b) vary or waive conditions that would otherwise apply to a visa of that type.

(2) Following the grant of a temporary entry class visa subject to restricted temporary entry instructions, the Minister may, by special direction,—

(a) impose further conditions, whether or not the conditions are specified in temporary entry instructions in relation to a visa of that type:

(b) vary or cancel conditions that would otherwise apply to a visa of that type or were imposed under subsection (1).

(3) The Minister may also do 1 or more of the things in subsection (2) by agreement with the visa holder.

(4) A condition imposed, varied, waived, or cancelled under this section—

(a) must be notified to the visa holder by the Minister or an immigration officer; and

(b) takes effect—

(i) from the date the visa is granted, if the condition is imposed, varied, or waived when the visa is granted; or

(ii) from the date specified in the notice (being a date not earlier than the date of notification), in any other case.

(5) To avoid doubt, subsection (2) applies whether the temporary entry class visa was granted as an exception to temporary entry instructions or otherwise.

54 Conditions on transit visas

(1) On granting a transit visa, the Minister or an immigration officer may—

(a) impose conditions in addition to those specified in transit instructions:

(b) vary or waive conditions that would otherwise apply to a transit visa.

(2) Following the grant of a transit visa, the Minister or an immigration officer may—

(a) impose further conditions, whether or not the conditions are specified in the transit instructions:

(b) vary or cancel conditions that would otherwise apply to a transit visa or were imposed under subsection (1).

(3) The Minister or an immigration officer may also do 1 or more of the things in subsection (2) by agreement with the visa holder.

(4) A condition imposed, varied, waived, or cancelled under this section—

(a) must be notified to the visa holder by the Minister or an immigration officer; and

(b) takes effect—

(i) from the date the visa is granted, if the condition is imposed, varied, or waived when the visa is granted; or

(ii) from the date specified in the notice (being a date not earlier than the date of notification), in any other case.

55 Condition that visa holder have sponsor

(1) This section applies to a visa holder who, when applying for the visa concerned, was required to provide a written undertaking from a sponsor in accordance with section 48.

(2) It is a condition of the visa that—

(a) the visa holder have a sponsor for the purposes of the specified matter or matters provided for in the written undertaking; and

(b) the sponsor meets the obligations in relation to the specified matter or matters provided for in the undertaking.

(2A) Where a condition under this section applies to a resident visa, the condition applies for the period, which may not exceed 10 years, specified—

(a) in immigration instructions, in relation to any type of resident visa; or

(b) by the Minister or an immigration officer, in relation to any particular visa.

(3) If the sponsor fails to comply with the undertaking—

(a) the sponsor owes a debt to the Crown, recoverable by the Crown in a court of competent jurisdiction, if the Crown incurs a cost as a result of the failure; and

(b) the sponsor owes a debt to a third party, recoverable by the third party in a court of competent jurisdiction, if a cost has been incurred by the third party as a result of the failure; and

(c) the visa holder is deemed to have breached the conditions of his or her visa imposed under subsection (2).

Section 55(2A): inserted, on 7 May 2015, by section 15 of the Immigration Amendment Act 2015 (2015 No 48).

56 Visa holder must comply with conditions

(1) The holder of a visa that is subject to conditions must comply with the conditions of the visa.

(2) In the case of conditions imposed by or under any other Act, or specified in immigration instructions, the obligation to comply with those conditions arises whether or not the visa holder is aware of the conditions, or of the implications of not complying with them.

(3) A visa holder must comply with conditions imposed or varied and notified to the holder by the Minister or an immigration officer under section 50, 51, 52, 53, or 54.

(4) It is presumed, in the absence of evidence to the contrary on the balance of probabilities, that a visa holder was notified of any conditions imposed or varied under section 50, 51, 52, 53, or 54 if notice of them was given in accordance with section 386A.

Section 56(4): amended, on 7 May 2015, by section 16 of the Immigration Amendment Act 2015 (2015 No 48).

General rules relating to visas

57 Applications for visas

(1) An application for a visa must be made in the manner prescribed for the class or type of visa sought.

(2) The applicant must provide his or her contact address and address for service.

(3) *[Repealed]*

(4) *[Repealed]*

Section 57(2): replaced, on 7 May 2015, by section 17 of the Immigration Amendment Act 2015 (2015 No 48).

Section 57(3): repealed, on 7 May 2015, by section 17 of the Immigration Amendment Act 2015 (2015 No 48).

Section 57(4): repealed, on 7 May 2015, by section 17 of the Immigration Amendment Act 2015 (2015 No 48).

58 Obligation on applicant to inform of all relevant facts, including changed circumstances

(1) It is the responsibility of an applicant for a visa to ensure that all information, evidence, and submissions that the applicant wishes to have considered in support of the application are provided when the application is made.

(2) The Minister or immigration officer considering the application—

(a) is not obliged to seek any further information, evidence, or submissions; and

(b) may determine the application on the basis of the information, evidence, and submissions provided.

(3) It is also the responsibility of an applicant for a visa to inform the Minister or an immigration officer of any relevant fact, including any material change in circumstances that occurs after the application is made, if that fact or change in circumstances—

(a) may affect the decision on the application; or

(b) may affect a decision to grant entry permission in reliance on the visa for which the application is made.

(4) Without limiting the scope of the expression **material change in circumstances** in subsection (3), such a change may relate to the applicant or another person included in the application, and may relate to any matter relevant to this Act or immigration instructions.

(5) For the purposes of sections 157 and 158, an applicant is treated as having concealed relevant information if he or she fails to comply with the obligation in subsection (3).

(6) It is sufficient ground for the Minister or an immigration officer to decline to grant a visa to a person if the Minister or officer is satisfied that the person,—

(a) whether personally or through an agent, in applying for the visa submitted false or misleading information or withheld relevant information that was potentially prejudicial to the grant of the visa; or

(b) did not ensure that an immigration officer was informed of any material change in circumstances to which subsection (3) applies between the time of making the application and the time of a decision on the application.

Compare: 1987 No 74 ss 17A, 25, 34B, 34G

Section 58(5): replaced, on 7 May 2015, by section 18 of the Immigration Amendment Act 2015 (2015 No 48).

59 Applications by minors

Where an application for a visa is made by or for a person under 18 years of age who is not married or in a civil union, the Minister or an immigration officer may decline the application if the Minister or immigration officer is not satisfied that any parent or guardian of the person consents to the making of the application.

Compare: 1987 No 74 s 35(2)

60 Biometric information may be required from visa applicant

(1) An applicant for a visa must allow biometric information to be collected from him or her.

(2) If the applicant fails to allow the biometric information to be collected, the Minister or an immigration officer may refuse to grant the visa applied for.

(3) The requirement in subsection (1) does not apply if the person is exempt from providing the information in accordance with regulations made under section 400(l).

61 Grant of visa in special case

(1) The Minister may at any time, of the Minister's own volition, grant a visa of any type to a person who—

(a) is unlawfully in New Zealand; and

(b) is not a person in respect of whom a deportation order is in force; and

(c) is not a person in respect of whom a removal order is in force.

(2) A decision to grant a visa under subsection (1) is in the Minister's absolute discretion.

Compare: 1987 No 74 s 35A

Section 61(1)(b): amended, on 7 May 2015, by section 19(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 61(1)(c): inserted, on 7 May 2015, by section 19(2) of the Immigration Amendment Act 2015 (2015 No 48).

62 Form of visa

(1) A visa is granted by being entered and retained in the records (whether electronic or physical) of the Department in a manner determined by the chief executive.

(2) The entry for the visa must specify, as appropriate,—

(a) its start date (which may be the date of its grant or a future or past date):

(b) any conditions of the visa that relate to travel, including—

(i) whether the visa allows travel to New Zealand on a later occasion:

(ii) if the visa allows travel to New Zealand, the period during which the holder may travel to New Zealand:

(iii) if the visa allows travel to New Zealand, whether the visa gives permission to travel to New Zealand on a single journey, multiple journeys, or a set number of journeys:

(c) in relation to the holder's stay in New Zealand, the date or event on the occurrence of which the visa will expire, or the period after which it will expire:

(d) any other conditions of the visa:

(e) for those persons granted entry permission, the date or dates the entry permission was granted:

(f) such other matters as may be required or approved by the chief executive.

(3) A visa may (but need not) be evidenced by an endorsement in a passport or certificate of identity.

(4) To avoid doubt, no electronic or physical record is required to be created for a visa that is deemed to be granted by or under this Act.

63 Expiry of visa

(1) If the holder of a visa is in New Zealand, the visa expires on the earliest of—

(a) the beginning of the day after the date specified in the visa as the expiry date:

(b) the beginning of the day after the day on which an event specified in the visa as the event on the occurrence of which the visa will expire occurs:

(c) the beginning of the day after the last day of the period for which the visa grants stay in New Zealand to the holder:

(d) the beginning of the day that is 3 months after the day on which an epidemic management notice expires, if the visa—

(i) is a temporary entry class visa to which section 78 applies; and

(ii) has not been cancelled earlier.

(2) If the holder of a visa is outside New Zealand, the visa expires on the earlier of—

(a) the day and time the holder left New Zealand, if the conditions of the visa do not allow further travel to New Zealand:

(b) the beginning of the day after the date that is specified by the conditions of the visa as the last day of the period of time within which travel is allowed to New Zealand.

64 Cancellation of visa on triggering event

(1) A visa is cancelled in the following circumstances:

(a) on the deportation of its holder from New Zealand:

(ab) on the day after the first date on which a deportation order may be served on the person under section 175A, whether the visa was issued before or after this paragraph came into force:

(b) on the refusal of entry permission to its holder:

(c) on entry permission granted to its holder being revoked:

(d) if the holder arrived at an immigration control area,—

(i) on the holder leaving the immigration control area without presenting himself or herself to an immigration officer; or

(ii) on the holder failing to comply with the instruction of an immigration officer to remain in the area:

(e) if the holder arrived at a place other than an immigration control area, on failing to present himself or herself in the prescribed manner and within the prescribed time as required under section 103(1)(b):

(f) on the start date of a further visa granted to its holder:

(g) on the grant of New Zealand citizenship to its holder:

(h) on the registration of New Zealand citizenship by descent under section 7(2) of the Citizenship Act 1977 by its holder:

(i) on the issue of an evidentiary certificate under section 21 of the Citizenship Act 1977 that confirms the holder is a New Zealand citizen.

(2) Despite subsection (1)(f), the grant of a temporary entry class visa to the holder of a residence class visa does not cancel the residence class visa unless the grant of the temporary entry class visa was made under section 68.

(3) To avoid doubt, if a person's visa is cancelled under subsection (1)(ab), the grant of a new visa to the person does not cancel the person's liability for deportation.

Section 64(1)(ab): inserted, on 7 May 2015, by section 20(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 64(3): inserted, on 7 May 2015, by section 20(2) of the Immigration Amendment Act 2015 (2015 No 48).

65 Cancellation of resident visa before holder first arrives in New Zealand as holder of visa

(1) The Minister or an immigration officer may cancel a resident visa at any time before its holder first arrives in New Zealand as the holder of the visa, if—

(a) the visa was granted when the holder was outside New Zealand; and

(b) the person no longer meets the rules or criteria of the immigration instructions applicable at the time the application for the visa was made.

(2) The Minister or an immigration officer must notify a person in writing if his or her visa is cancelled under this section.

Section 65(2): amended, on 7 May 2015, by section 21 of the Immigration Amendment Act 2015 (2015 No 48).

66 Cancellation of temporary entry class or transit visa by Minister or immigration officer

(1) The Minister or an immigration officer may, if the Minister or immigration officer determines there is sufficient reason,—

(a) cancel a temporary entry class visa at any time when its holder is outside New Zealand:

(b) cancel a temporary entry class visa that has been extended in accordance with section 78 at any time:

(c) cancel a transit visa at any time.

(2) The Minister or an immigration officer must notify a person, in writing, if—

(a) his or her visa is cancelled under this section; and

(b) he or she is outside New Zealand.

Compare: 1987 No 74 ss 19, 32

67 Cancellation of visa for administrative error

An immigration officer may cancel a visa that the officer believes on reasonable grounds was granted as a result of an administrative error if—

(a) the visa was granted to a person in a place designated by the chief executive under section 383 and—

(i) the person is still in the designated place; or

(ii) the person has not left the arrival hall of the airport or port at which he or she arrived in New Zealand; or

(b) the visa was granted to a person in an immigration control area, or an office of the Department, in New Zealand and the person is still in the control area or office; or

(c) advice of the grant of the visa has not been sent or given to the person concerned, in any other case.

68 Grant of further visa where visa granted in error

(1) If the Minister or an immigration officer determines that a visa was granted as a result of an administrative error but the visa was not cancelled under section 67, the Minister or immigration officer may, in his or her absolute discretion,—

(a) offer the holder a visa of such class and type, and subject to such conditions, as the Minister or immigration officer considers appropriate; and

(b) if the holder agrees, grant such a visa.

(2) If the holder does not agree, he or she remains liable for deportation under section 155(1).

(3) Subsection (2) is for the avoidance of doubt.

Waiver of requirement for visa permitting travel to New Zealand in certain cases

69 Waiver of requirement for visa permitting travel to New Zealand in certain cases

(1) Regulations made under section 400 may waive the requirement to hold a visa permitting travel to New Zealand in relation to any class of persons, and provide for any conditions of such a waiver.

(2) The Minister may, by special direction,—

(a) waive for a period not exceeding 3 months the requirement to hold a visa permitting travel to New Zealand in relation to any class of persons, subject to any conditions specified by the Minister:

(b) suspend for a period not exceeding 3 months a waiver made by regulations referred to in subsection (1):

(c) waive, in any individual case, the requirement to hold a visa permitting travel to New Zealand:

(d) suspend, in any individual case, a waiver made by regulations referred to in subsection (1).

(3) Any waiver or suspension of a waiver made in accordance with subsection (1) or (2)(a) or (b) may, without limiting the generality of the manner in which persons may be classified, classify persons to whom the waiver or suspension of waiver applies by reference to any or all of the following:

(a) their nationality:

(b) the country or place from which they are travelling (whether it be their original or an intermediate point of departure):

(c) their immediate or ultimate destination after being in or transiting through New Zealand:

(d) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued.

(4) Any special direction made under subsection (2)(a) or (b)—

(a) must be published in the *Gazette*, and notified in writing through diplomatic channels to any country concerned:

(b) expires at the end of the period of 3 months (or such shorter period as is specified in the direction) following the day on which the direction was made, unless sooner cancelled by the Minister by a further special direction, or by regulations:

(c) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

(5) A special direction under subsection (2)(a) or (b) may not be effectively continued in force by the making of a further special direction to the same or similar effect.

(6) A waiver under this section does not of itself entitle a person subject to the waiver to be granted entry permission.

Compare: 1987 No 74 ss 11, 12

Section 69(4)(c): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Subpart 2—Classes of visa

70 Classes of visa

The following classes of visa may be granted under this Act:

(a) residence class visas, consisting of—

(i) permanent resident visas:

(ii) resident visas:

(b) temporary entry class visas, consisting of—

(i) temporary visas:

(ii) limited visas:

(iii) interim visas:

(c) transit visas.

Compare: 1987 No 74 s 14

Residence class visas

71 Who may apply for residence class visa

(1) The following persons may apply for a residence class visa:

(a) a person who is outside New Zealand and who wishes to come to New Zealand and stay indefinitely:

(b) a person who is—

(i) onshore; and

(ii) the holder of a temporary visa or a resident visa; and

(iii) not subject to section 150:

(c) a person to whom a visa waiver applies, and who falls within a class prescribed by regulations as a person who may apply for a residence class visa—

(i) in a place designated by the chief executive under section 383; or

(ii) in an immigration control area; or

(iii) in a prescribed place.

(2) No person who is of a class or category that, by virtue of immigration instructions, may only apply for a resident visa or a permanent resident visa by invitation, may apply for such a visa without an invitation.

(3) A person may apply for a resident visa or a permanent resident visa in response to an invitation to apply only if the application is made in the time frame specified in the residence instructions.

(4) To avoid doubt, no limited visa holder, interim visa holder, transit visa holder, or person who is liable for deportation may apply for a residence class visa.

(5) However, the Minister, in his or her absolute discretion, may grant a residence class visa to a person to whom subsection (4) applies.

Compare: 1987 No 74 s 17

72 Decisions on applications for residence class visa

(1) Where the Minister or an immigration officer makes any decision in relation to an application for a residence class visa, that decision must be made in terms of the residence instructions applicable at the time the application was made and any discretion exercised must be in terms of those instructions.

(2) No application for a residence class visa that is received by an immigration officer may be referred to the Minister for decision at first instance, unless the Minister gives a special direction to that effect.

(3) Nothing in this section prevents the Minister, in his or her absolute discretion, from making any decision to grant a residence class visa as an exception to residence instructions in any particular case.

Compare: 1987 No 74 ss 13C, 17A(2)

73 Currency and nature of permanent resident visa

The holder of a permanent resident visa is entitled—

(a) to travel to New Zealand at any time:

(b) to be granted entry permission:

(c) to stay in New Zealand indefinitely:

(d) to work in New Zealand or in the exclusive economic zone of New Zealand:

(e) to study in New Zealand.

74 Currency and nature of resident visa

(1) The holder of a resident visa—

(a) is entitled to—

(i) travel to New Zealand; and

(ii) apply for entry permission (whether before or after travelling to New Zealand); and

(b) if granted entry permission, is entitled, in accordance with the conditions of the visa (if any),—

(i) to stay in New Zealand indefinitely:

(ii) to work in New Zealand or in the exclusive economic zone of New Zealand:

(iii) to study in New Zealand.

(2) Subsection (1)(a) applies only if the visa holder's travel to New Zealand is consistent with the conditions of the visa relating to travel.

75 Former New Zealand citizens deemed to hold resident visa

(1) This section applies to a person in New Zealand who—

(a) renounces his or her New Zealand citizenship; or

(b) is deprived of his or her New Zealand citizenship.

(2) The person is deemed, from the date of renouncing, or being deprived of, his or her citizenship, to hold a resident visa—

(a) permitting the person to stay in New Zealand; and

(b) subject to any conditions specified in residence instructions certified for the purposes of this section at the time the person renounced or was deprived of his or her citizenship.

Temporary entry class visas: provisions applying to all types

76 Decisions on applications for temporary entry class visa

(1) The Minister or an immigration officer may, in the Minister's or officer's discretion, grant a temporary entry class visa as an exception to temporary entry class instructions in any particular case.

(2) Subsection (1) does not apply to an application for a temporary entry class visa of a type subject to restricted temporary entry instructions.

(3) However, nothing in subsection (2) prevents the Minister in his or her absolute discretion from making a decision to grant a visa as an exception to restricted temporary entry instructions in any particular case.

77 Currency and nature of temporary entry class visa

(1) A temporary entry class visa may be granted—

(a) until a specified date; or

(b) until a specified event on the occurrence of which the visa expires; or

(c) for a specified period of time.

(2) The holder of a temporary entry class visa—

(a) is entitled to—

(i) travel to New Zealand; and

(ii) apply for entry permission (whether before or after travelling to New Zealand); and

(b) if granted entry permission, is entitled, in accordance with the conditions of the visa (if any), to stay in New Zealand during the currency of the visa.

(3) Subsection (2)(a) applies only if the visa holder's travel to New Zealand is consistent with the conditions of the visa relating to travel.

(4) The holder of a temporary entry class visa may—

(a) work in New Zealand, or in the exclusive economic zone of New Zealand, only if the conditions of the visa allow, and only consistently with those conditions:

(b) study in New Zealand, only if the conditions of the visa allow, and only consistently with those conditions.

78 Deemed extension of temporary entry class visa expiring during epidemic

(1) This section applies to a temporary entry class visa held by a person in New Zealand if—

(a) it was current immediately before the commencement of an epidemic management notice; and

(b) but for this section, it would expire before the day that is 14 days after the day on which the notice expires.

(2) The visa must, for all purposes, be treated as if it continues to be a current visa allowing stay in New Zealand until the earlier of the following events:

(a) its cancellation:

(b) the expiration of 3 months after the day on which the epidemic management notice expires.

(3) Subsection (2) does not require—

(a) the endorsement or modification of the visa; or

(b) the issue of a document extending the visa; or

(c) the grant of a new visa.

Compare: 1987 No 74 s 35AC

Temporary entry class visas: provisions applying to temporary visas

79 Who may apply for temporary visa

(1) The following persons may apply for a temporary visa:

(a) a person, including a person to whom a visa waiver applies, who is outside New Zealand and who wishes to come to New Zealand for any purpose for which a temporary visa may be granted:

(b) a person arriving in New Zealand and to whom a visa waiver applies:

(c) a person who is onshore, is the holder of a temporary visa, and is either—

(i) a person to whom section 150(1) and (2) do not apply; or

(ii) a claimant to whom section 150(3) applies.

(2) No person who is of a class or category that, by virtue of immigration instructions, may only apply for a temporary visa by invitation may apply for such a visa without an invitation.

(3) A person may apply for a temporary visa (or a temporary visa of a particular type) in response to an invitation to apply only if the application is made in the time frame specified in the temporary entry instructions.

(4) To avoid doubt,—

(a) no limited visa holder, interim visa holder, or transit visa holder may apply for a temporary visa; and

(b) a person liable for deportation may only apply—

(i) for a visa of the same class and type that he or she held before becoming liable for deportation; and

(ii) if he or she is not unlawfully in New Zealand.

(5) However, the Minister, in his or her absolute discretion, may grant a temporary visa to a person prohibited from applying for a temporary visa under subsection (4).

Compare: 1987 No 74 s 25(1)

Temporary entry class visas: provisions applying to interim visas

80 Interim visa

(1) The Minister or an immigration officer may, for the purpose of maintaining the lawful status in New Zealand of the applicant while the application is being considered, grant an interim visa to a person in New Zealand who—

(a) holds a temporary visa; and

(b) has applied for a further visa (whether a residence class or a temporary entry class visa).

(2) No person has the right to apply for an interim visa, and any decision as to whether to grant an interim visa is a matter for the absolute discretion of the Minister or relevant immigration officer.

(3) The holder of an interim visa may not apply for a visa of any other class or type.

Temporary entry class visas: provisions applying to limited visas

81 Who may apply for limited visa

The following persons may apply for a limited visa:

(a) a person, including a person to whom a visa waiver applies, who is outside New Zealand and who wishes to come to New Zealand for an express purpose:

(b) a person arriving in New Zealand to whom a visa waiver applies who wishes to stay in New Zealand for an express purpose:

(c) a person onshore who is—

(i) the holder of a current limited visa, if further time is required to achieve the express purpose for which that visa was granted; or

(ii) the holder of a temporary visa (other than a person to whom section 150 applies).

Compare: 1987 No 74 ss 14DA, 34B

82 Grant of limited visa rather than temporary visa applied for or held

(1) If a person applies for a temporary visa (rather than a limited visa), the Minister or an immigration officer may grant the person a limited visa rather than the temporary visa applied for if, and only if,—

(a) the person,—

(i) including a person to whom a visa waiver applies, is outside New Zealand and wishes to come to New Zealand for an express purpose; or

(ii) is a person to whom a visa waiver applies who arrives in New Zealand and wishes to stay in New Zealand for an express purpose; or

(iii) is the holder of a temporary visa, and agrees to the grant of the limited visa; and

(b) the Minister or the immigration officer identifies a risk that the person will remain in New Zealand beyond the expiry of his or her visa; and

(c) the Minister or the immigration officer considers that the grant of a limited visa rather than a temporary visa is necessary to manage that risk.

(2) If the holder of a temporary visa applies for entry permission, the Minister or an immigration officer may cancel the temporary visa by granting the person a limited visa, and grant entry permission to the person on the basis of the limited visa if, and only if,—

(a) the person wishes to enter New Zealand for an express purpose; and

(b) the Minister or the immigration officer identifies a risk that the person will remain in New Zealand beyond the expiry of his or her visa; and

(c) the Minister or the immigration officer considers that the grant of a limited visa (and entry permission on the basis of that visa) is necessary to manage that risk; and

(d) the person agrees to the grant of a limited visa and entry permission on the basis of that visa.

Compare: 1987 No 74 s 14DA(2)

83 Grant of limited visa in relation to criminal matters

(1) A limited visa may be granted to a person if—

(a) a certificate has been issued in respect of the person under section 13 or 42(5) of the Mutual Assistance in Criminal Matters Act 1992; and

(b) the limited visa is granted for the sole purpose of enabling the person—

(i) to be in New Zealand for the purposes of giving or providing evidence or assistance pursuant to a request made under section 12 of the Mutual Assistance in Criminal Matters Act 1992; or

(ii) to be transported through New Zealand pursuant to section 42 of that Act.

(2) A limited visa may also be granted to a person for the sole purpose of enabling the person to return to New Zealand to face any charge in New Zealand or to serve any sentence imposed on the person in New Zealand.

Compare: 1987 No 74 s 27A

84 Currency of limited visa

(1) The Minister or, subject to any special direction, an immigration officer may grant a limited visa for the period that—

(a) is appropriate to achieve the express purpose for which the visa is granted; and

(b) does not exceed any period specified in respect of limited visas of that category by temporary entry instructions.

(2) If the express purpose for which a limited visa was granted is achieved before the date on which it will expire, or if at any time it becomes apparent that the purpose is no longer achievable or has been abandoned by the visa holder,—

(a) an immigration officer may notify the visa holder of an earlier expiry date for the visa (being a date not earlier than 14 days after that notice is given to the visa holder); and

(b) the visa then expires on that earlier expiry date.

Compare: 1987 No 74 s 34C

85 Limitations and conditions on holders of limited visa

(1) The holder of a limited visa must leave New Zealand no later than the day that the visa expires.

(2) The holder of a limited visa may not, whether before or after the expiry of the visa,—

(a) apply for a visa of a different class or type while in New Zealand; or

(b) while in New Zealand, request a special direction, or a visa under section 61; or

(c) bring any appeal under this Act (other than an appeal under section 194 or 195), whether to a court, the Tribunal, or otherwise.

(3) Every limited visa is to be granted subject to conditions relating to its purpose.

Compare: 1987 No 74 ss 14DA(4), 34D

Transit visas

86 Who must obtain transit visa

(1) A person intending to travel to and be in New Zealand only as a transit passenger must, before proceeding to New Zealand, apply for and obtain a transit visa.

(2) Subsection (1) applies to the person unless he or she is classified as a person to whom a transit visa waiver applies—

(a) by regulations made under section 400; or

(b) by special direction of the Minister under subsection (4).

(3) Regulations classifying persons as persons to whom a transit visa waiver applies—

(a) may, without limiting the generality of the manner in which persons may be classified, classify persons by reference to all or any of the following:

(i) their nationality:

(ii) the country or place from which they are travelling (whether it be their original or intermediate point of departure):

(iii) their immediate or ultimate destination after transiting through New Zealand:

(iv) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued:

(b) are subject to any special direction made under subsection (4) that suspends any relevant transit visa waiver.

(4) The Minister may, by special direction that has effect for a period not exceeding 3 months,—

(a) classify persons as persons to whom a transit visa waiver applies (whether by reference to the matters referred to in subsection (3)(a) or otherwise):

(b) suspend any transit visa waiver specified in regulations for any class or classes of person.

(5) A special direction made under subsection (4)—

(a) must be published in the *Gazette* and notified in writing through diplomatic channels to any country concerned; and

(b) expires at the end of the period of 3 months following the day on which it was made, unless sooner cancelled by the Minister by a further special direction, or by regulations; and

(c) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

(6) A special direction made under subsection (4) may not be effectively continued in force by the making of a further special direction to the same or similar effect.

(7) *[Repealed]*

Compare: 1987 No 74 s 14E(1)–(2D)

Section 86(5)(b): amended, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 86(5)(c): inserted, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 86(7): repealed, on 6 November 2015, by section 22 of the Immigration Amendment Act 2015 (2015 No 48).

86A Obligation of transit passenger

(1) During the transit period applying to a transit passenger, the transit passenger must remain—

(a) on the craft concerned; or

(b) in an immigration control area; or

(c) in the custody of the Police.

(2) If a transit passenger fails to comply with subsection (1), the relevant transit period immediately expires (and section 115(1)(f) therefore applies).

Section 86A: inserted, on 6 November 2015, by section 23 of the Immigration Amendment Act 2015 (2015 No 48).

87 Transit visa may be granted as exception to immigration instructions

The Minister or an immigration officer may, in his or her absolute discretion, grant a transit visa to a person as an exception to immigration instructions.

88 Currency of transit visa

A transit visa is current for the period or until the date specified in it, and may be expressed to be effective for any number of journeys to New Zealand in that period or until that date.

Compare: 1987 No 74 s 14E(3)

Section 88: replaced, on 6 November 2015, by section 24 of the Immigration Amendment Act 2015 (2015 No 48).

89 Limitations on holders of transit visa

(1) The holder of a transit visa may not apply for entry permission or any class or type of visa while in New Zealand during the transit period.

(2) However, the Minister or an immigration officer, in his or her absolute discretion, may grant to the person a visa of the type and class that the Minister or immigration officer thinks fit.

Compare: 1987 No 74 s 14E(4), (5)

90 Cancellation of transit visa

An immigration officer may cancel a transit visa at any time but, if he or she cancels the visa after the holder of the visa has arrived in New Zealand, the person is liable for turnaround.

91 Expiry of transit period

At any time before the transit period of a transit passenger expires, an immigration officer may, in his or her absolute discretion,—

(a) extend the transit passenger's transit period beyond the transit period prescribed under section 401(d); or

(b) grant the transit passenger a visa and entry permission.

Section 91: replaced, on 6 November 2015, by section 25 of the Immigration Amendment Act 2015 (2015 No 48).

Invitation to apply for visa

92 Expressions of interest

(1) A person who, by virtue of immigration instructions, is of a class or category of person that may apply for a visa of a particular class or type only if invited to do so by the Minister or an immigration officer may notify his or her interest in obtaining such an invitation in the prescribed manner.

(2) A person submitting an expression of interest must provide a contact address and an address for service.

(3) *[Repealed]*

(4) *[Repealed]*

Section 92(2): replaced, on 7 May 2015, by section 26 of the Immigration Amendment Act 2015 (2015 No 48).

Section 92(3): repealed, on 7 May 2015, by section 26 of the Immigration Amendment Act 2015 (2015 No 48).

Section 92(4): repealed, on 7 May 2015, by section 26 of the Immigration Amendment Act 2015 (2015 No 48).

93 Obligation to inform of all relevant facts, including changed circumstances

(1) It is the responsibility of the person submitting an expression of interest to ensure that all information, evidence, and submissions that the person wishes to have considered in support of the expression of interest are provided when the expression of interest is submitted.

(2) The Minister or immigration officer considering the expression of interest—

(a) is not obliged to seek any further information, evidence, or submissions; and

(b) may determine whether to issue an invitation to apply for a visa on the basis of the information, evidence, and submissions provided.

(3) Nothing in subsection (2) prevents the Minister or immigration officer from taking into account any information, evidence, or submissions provided by the person at any time before the decision whether to issue the invitation is made.

(4) It is also the responsibility of a person expressing an interest in obtaining an invitation to apply for a visa under section 94 to inform the Minister or an immigration officer of any relevant fact, including any material change in circumstances that occurs after the expression of interest is notified, if that fact—

(a) may affect the decision to issue an invitation to apply; or

(b) may affect a decision to grant a visa to the person.

(5) Without limiting the scope of the expression **material change in circumstances**, such a change may relate to the person submitting an expression of interest or other person included in the expression of interest, and may relate to any matter relevant to this Act or immigration instructions.

(6) Failure to comply with the obligation set out in subsection (4) must be treated as concealing relevant information for the purposes of sections 157 and 158.

Compare: 1987 No 74 s 13D

Section 93(6): amended, on 7 May 2015, by section 27 of the Immigration Amendment Act 2015 (2015 No 48).

94 Invitation to apply for visa

(1) An invitation to apply for a visa is a statement by or on behalf of the Minister or an immigration officer, whether made electronically or in writing, that the person to whom it is made is authorised to make an application for a visa of a particular class or type.

(2) No person may apply for a visa without an invitation if the person is of a class or category of person that, by virtue of immigration instructions, may apply for the visa only if invited to do so.

(3) If an invitation is required by immigration instructions for the person to be able to apply for the relevant visa, the statement of the invitation is sufficient authority for the making of the application (unless the invitation is subsequently revoked).

(4) Despite anything in this section or in any immigration instructions, the Minister may, by special direction, issue an invitation to apply for a visa to a person whether or not the person has expressed his or her interest in the manner required by this Act or immigration instructions.

(5) An invitation to apply for a visa may at any time be revoked by the Minister or an immigration officer. A revocation takes immediate effect.

(6) A decision as to whether to issue an invitation to apply for a visa may be made having regard to the immigration instructions applicable at the time of the decision, even if they differ from the immigration instructions applicable at the time of notification of the relevant expression of interest.

(7) In a case where residence or restricted temporary entry instructions change between the date of issue of an invitation to apply for a residence class visa or visa to which restricted temporary entry instructions apply and the date on which a person's application for the relevant visa is made in response to that invitation, the decision on that application must be made in terms of the immigration instructions applicable at the time the application for the visa was made (and not at the time the invitation was issued), and, subject to sections 72(3) and 76(3), any discretion exercised must be in terms of those instructions.

Compare: 1987 No 74 s 13E

95 Issue of invitation to apply for visa matter of discretion

(1) No person is entitled as of right to an invitation to apply for a visa.

(2) The decision whether to issue such an invitation, or to revoke such an invitation once issued, is a matter for the discretion of the Minister or, subject to any special direction, an immigration officer.

Compare: 1987 No 74 s 10A

Part 4
Arrivals and departures

Advance passenger processing

96 Carrier, and person in charge, of commercial craft to provide advance passenger processing information before departure

(1) This section applies to a carrier, and a person in charge, of a commercial craft if—

(a) one of the following applies:

(i) the craft is scheduled to travel to New Zealand in the course of a scheduled international service:

(ii) it is proposed that the craft travel to New Zealand from another country:

(iii) the craft is scheduled to travel from New Zealand in the course of a scheduled international service:

(iv) it is proposed that the craft travel from New Zealand to another country; and

(b) the chief executive has notified the carrier, or a person in charge, of the craft that the carrier or person in charge of the craft must comply with this section.

(2) A carrier, or a person in charge, of a commercial craft must—

(a) obtain from every person who intends to board the craft for the purpose of travelling to, or from, New Zealand the advance passenger processing information prescribed for the purposes of this subsection; and

(b) provide that information to the chief executive, by means of an approved system, before the departure of the craft to travel to, or from, New Zealand.

(3) The chief executive may, by notice in writing, in any specified circumstances, exempt a carrier, or person in charge, of a commercial craft from complying with some or all of the requirements under subsection (2).

Section 96: replaced, on 28 September 2017, by section 270 of the Intelligence and Security Act 2017 (2017 No 10).

97 Chief executive may make decision about person boarding commercial craft for purpose of travelling to New Zealand

(1) The chief executive may decide that a person in relation to whom information has been received under section 96(2) and who intends to board a commercial craft for the purpose of travelling to New Zealand—

(a) may board the craft; or

(b) may not board the craft; or

(c) may board the craft only if he or she complies with conditions specified by the chief executive.

(2) The chief executive—

(a) must notify a carrier, or a person in charge, of a commercial craft from whom information has been received under section 96(2) of a decision made under subsection (1); and

(b) may do so in any form he or she thinks appropriate, including, but not limited to, by means of an approved system, which may contain code that represents the outcome of the decision; and

(c) may do so in any manner he or she thinks appropriate, including, but not limited to, by means of an automated electronic notification.

(3) The chief executive—

(a) may make a decision under subsection (1) whether or not the person to whom the decision relates—

(i) holds a visa to travel to New Zealand; or

(ii) has been granted entry permission; or

(iii) is a person to whom a visa waiver applies; but

(b) may not make a decision under subsection (1)(b) or (c) if the person to whom the decision relates is—

(i) a New Zealand citizen who, before boarding the craft, holds and produces a New Zealand passport; or

(ii) a New Zealand citizen who, before boarding the craft, holds and produces a foreign passport containing an endorsement of a type described in section 384; or

(iii) a New Zealand citizen who, before boarding the craft, produces a returning resident's visa (within the meaning of section 2(1) of the former Act) endorsed in a current passport; or

(iv) a permanent resident; or

(v) a resident visa holder, unless the person has not previously travelled to New Zealand as the holder of that visa and the visa was granted outside New Zealand.

(4) A person in relation to whom a decision is made under subsection (1)—

(a) may not appeal the decision to any court, the Tribunal, the Minister, or otherwise:

(b) may bring review proceedings in relation to the decision only on the grounds that he or she is a person in relation to whom that decision should not have been made because he or she is a person to whom subsection (3)(b) applies.

(5) The chief executive is not obliged to give reasons for a decision made under subsection (1) other than that subsection (1) applies, and section 23 of the Official Information Act 1982 does not apply in respect of the decision.

(6) Nothing in section 305 applies to the chief executive when he or she is giving a notification under subsection (2).

Compare: 1987 No 74 s 125AB

Section 97 heading: replaced, on 28 September 2017, by section 271(1) of the Intelligence and Security Act 2017 (2017 No 10).

Section 97(1): replaced, on 28 September 2017, by section 271(2) of the Intelligence and Security Act 2017 (2017 No 10).

Section 97(2)(a): replaced, on 28 September 2017, by section 271(3) of the Intelligence and Security Act 2017 (2017 No 10).

Section 97(6): replaced, on 28 September 2017, by section 271(4) of the Intelligence and Security Act 2017 (2017 No 10).

97A Chief executive may make decision about person boarding commercial craft for purpose of travelling from New Zealand

(1) The chief executive may decide that a person in relation to whom information has been received under section 96(2) and who intends to board a commercial craft for the purpose of travelling from New Zealand—

(a) may board the craft; or

(b) may not board the craft; or

(c) may board the craft only if he or she complies with conditions specified by the chief executive.

(2) The chief executive may make a decision under subsection (1)(b) or (c) only if the chief executive has reason to believe that the person is attempting to travel on—

(a) a lost, stolen, or invalid passport or certificate of identity; or

(b) a forged, false, fraudulently obtained, or improperly altered passport or certificate of identity; or

(c) a passport or certificate of identity that does not relate to that person.

(3) The chief executive—

(a) must notify a carrier, or a person in charge, of a commercial craft from whom information has been received under section 96(2) of a decision made under subsection (1); and

(b) may do so in any form that he or she thinks appropriate, including, but not limited to, by means of an approved system, which may contain code that represents the outcome of the decision; and

(c) may do so in any manner that he or she thinks appropriate, including, but not limited to, by means of an automated electronic notification.

(4) Nothing in section 305 applies to the chief executive when he or she is giving a notification under subsection (3).

Section 97A: inserted, on 28 September 2017, by section 272 of the Intelligence and Security Act 2017 (2017 No 10).

98 Grant of entry permission outside New Zealand

(1) An immigration officer may grant entry permission to a person outside New Zealand if the person—

(a) is the holder of a visa (other than a transit visa); and

(b) is in a place designated by the chief executive under section 383; and

(c) has applied for entry permission in the prescribed manner.

(2) If a person outside New Zealand does not apply for entry permission under subsection (1)(c), section 103 applies to the person on his or her arrival in New Zealand.

99 New Zealand citizen may confirm citizenship before arrival in New Zealand

(1) A New Zealand citizen who intends entering New Zealand as a New Zealand citizen may, before boarding a craft for the purpose of travelling to New Zealand, comply with any requirements prescribed for the purpose of confirming a person's status as a New Zealand citizen.

(2) Otherwise, the person must fulfil the corresponding responsibility under section 103(1)(e) on his or her arrival in New Zealand.

(3) Subsections (4) and (5) apply to a person who—

(a) intends to enter New Zealand as a New Zealand citizen; and

(b) presents one of the following types of passport before boarding a craft for the purpose of travelling to New Zealand:

(i) a New Zealand passport; or

(ii) a foreign passport containing an endorsement of a type described in section 384; or

(iii) a foreign passport containing a returning resident's visa (within the meaning of section 2(1) of the former Act).

(4) The person may, before boarding the craft, allow himself or herself to be photographed to confirm his or her New Zealand citizenship.

(5) Otherwise, the person must fulfil the corresponding requirement under section 104 on his or her arrival in New Zealand.

(6) A photograph taken under subsection (4) (including any electronic record of the photograph) may be compared with—

(a) information in the person's passport; or

(b) information held by the department of State for the time being responsible for the administration of the Passports Act 1992; or

(c) if the person does not hold a New Zealand passport, information held by the Department.

(7) A photograph taken under subsection (4) must not be retained by the Department if the fact of the person's New Zealand citizenship is confirmed.

(8) A photograph taken under subsection (4) that does not confirm the fact of the person's New Zealand citizenship may be retained for the purposes of administering this Act.

100 Collection of biometric information from proposed arrivals

(1) A person who is proposing to board a craft for the purposes of travelling to New Zealand must allow biometric information to be collected from him or her.

(2) The requirement in subsection (1) does not apply if the person is exempt from providing the information in accordance with regulations made under section 400(l).

(3) If the person fails to allow the biometric information to be collected, the chief executive may decide that the person—

(a) may not board the craft; or

(b) may board the craft only if the person complies with conditions specified by the chief executive.

(4) Nothing in this section applies to a person who, before boarding the craft, holds and produces—

(a) a New Zealand passport; or

(b) a foreign passport containing an endorsement of a type described in section 384; or

(c) a foreign passport containing a returning resident's visa (within the meaning of section 2(1) of the former Act).

Section 100: not yet in force.

Obligations in relation to craft coming to New Zealand

101 Obligations in relation to craft en route to or arriving in New Zealand

(1) Except as provided in regulations made under this Act, the carrier, and the person in charge, of any craft that is en route to New Zealand or that berths, lands, or arrives in New Zealand from another country have the following responsibilities:

(a) to ensure that all persons boarding the craft have the prescribed documentation for immigration purposes:

(b) on arrival of the craft at a place that is or contains an immigration control area,—

(i) to produce for inspection such prescribed documents as an immigration officer may specify; and

(ii) if applicable, to prevent, with such reasonable force as may be necessary, the disembarkation of any person from the craft otherwise than into an immigration control area:

(c) subject to section 25 of the Customs and Excise Act 1996, where the craft arrives, or is to arrive, in New Zealand elsewhere than at a place that is or contains an immigration control area because of weather conditions or other unforeseen circumstances, to make appropriate arrangements for all persons on board the craft to report in the manner and within the time prescribed for the purposes of section 103(1)(b):

(d) if a stowaway has been found on the craft, to report that fact to an immigration officer as soon as practicable.

(2) In addition to any obligations under section 102, the carrier, and the person in charge, of a craft that is en route to New Zealand or that berths, lands, or arrives in New Zealand from another country have the following responsibilities:

(a) in the case of a craft that is not a commercial passenger aircraft on a scheduled international service, to supply on demand by an immigration officer a list giving such details as the officer may specify concerning every person (whether a member of the crew or a passenger) who has been on board the craft since its last port of call:

(b) in the case of a commercial passenger aircraft on a scheduled international service, to supply such available information as may be required by an immigration officer relating to any person who may have been on board the craft since its last place of call.

(3) Once a craft that is en route to New Zealand has entered the territorial limits of New Zealand, the person in charge of the craft is, for the purpose of ensuring or facilitating compliance with this Act, responsible for preventing, with such reasonable force as may be necessary, the disembarkation of any person from the craft other than for the purpose of carrying out the person's responsibilities under section 103.

(4) Subsections (1) to (3) are subject to any applicable special direction or to regulations made under section 400.

(5) *[Repealed]*

Compare: 1987 No 74 s 125(1), (2)

Section 101(5): repealed, on 28 September 2017, by section 273 of the Intelligence and Security Act 2017 (2017 No 10).

102 Obligations of carriers, and persons in charge, of craft to provide information

(1) The purpose of this section is to facilitate—

(a) the exercise or performance of powers, functions, or duties under this Act:

(b) the prevention, detection, investigation, prosecution, and punishment of immigration offences:

(c) the protection of border security.

(2) A carrier, and a person in charge, of a commercial craft who is required under section 96 to provide information to the chief executive must also provide to the chief executive the information prescribed for the purposes of this section about every person who intends or intended to board the craft for the purpose of—

(a) travelling to New Zealand, including persons who did not board the craft for any reason (including because of a decision made by the chief executive under section 97); or

(b) travelling from New Zealand, including persons who did not board the craft for any reason (including because of a decision made by the chief executive under section 97A).

(3) The chief executive may, by notice in writing, in any specified circumstances, exempt a carrier, or a person in charge, of a commercial craft from complying with some or all of the requirements under subsection (2).

(4) Despite being granted an exemption, a carrier, or a person in charge, of a commercial craft must provide to the chief executive—

(a) some or all of the information required under subsection (2)(a) if requested by the chief executive not more than 14 days before or after the arrival of the craft in New Zealand; or

(b) some or all of the information required under subsection (2)(b) if requested by the chief executive not more than 14 days before or after the departure of the craft from New Zealand.

(5) Information required under subsection (2) or (4) must be provided, or otherwise made available,—

(a) in a form and manner approved by the chief executive; and

(b) on the date, or at the time, specified by the chief executive; and

(c) for the period, if any, specified by the chief executive.

(6) Information provided or otherwise made available to the chief executive under this section may be retained by the chief executive for any of the purposes listed in subsection (1).

Section 102: replaced, on 6 June 2015, by section 28 of the Immigration Amendment Act 2015 (2015 No 48).

Section 102(2): replaced, on 28 September 2017, by section 274 of the Intelligence and Security Act 2017 (2017 No 10).

Section 102(3): replaced, on 28 September 2017, by section 274 of the Intelligence and Security Act 2017 (2017 No 10).

Section 102(4): replaced, on 28 September 2017, by section 274 of the Intelligence and Security Act 2017 (2017 No 10).

Obligations on persons arriving in New Zealand

103 Obligations on persons arriving in New Zealand

(1) Except as provided in regulations made under this Act, or in any special direction, every person who arrives in New Zealand from another country has the following responsibilities:

(a) if the person arrives at an immigration control area, to present himself or herself to an immigration officer without delay:

(b) if the person arrives at a place other than an immigration control area, to present himself or herself in the prescribed manner within the prescribed time:

(c) to apply for a visa in the prescribed manner, if the person is a person to whom a visa waiver applies:

(d) to apply for entry permission in the prescribed manner unless—

(i) the person is a New Zealand citizen and holds and produces a New Zealand passport; or

(ii) the person is a New Zealand citizen and holds and produces a foreign passport containing an endorsement of a type described in section 384; or

(iii) the person is a New Zealand citizen and holds and produces a foreign passport containing a returning resident's visa (within the meaning of section 2(1) of the former Act); or

(iv) the person is a transit passenger who holds a transit visa or is a person to whom a transit visa waiver applies:

(da) to produce, on demand by an immigration officer, the person's passport or certificate of identity and any travel tickets held by the person:

(e) in the case of a New Zealand citizen who is entering New Zealand as a New Zealand citizen, to comply with any requirements prescribed for the purpose of confirming the person's status as a New Zealand citizen:

(f) to comply with any direction of an immigration officer to remain in the immigration control area or other prescribed place, or a specified part of the area or place:

(g) to comply with any other directions of an immigration officer while in an immigration control area.

(2) However, the obligation in subsection (1)(e) does not apply if the person, before arriving in New Zealand, has already complied with those requirements in accordance with section 99.

(3) Where a person arriving in New Zealand is, by reason of age or disability, incapable of complying with any of the requirements of subsection (1), it is the responsibility of the parent or guardian or other person for the time being having the care of that person to comply with those requirements on that person's behalf.

(4) Every passport or certificate of identity produced by a person to an immigration officer under this section—

(a) must, if the person is a New Zealand citizen or is granted entry permission, be returned to the person before the person leaves the immigration control area; or

(b) if the person is refused entry permission, may be retained by the immigration officer, but must be returned to the person on the person's departure from New Zealand.

(5) To avoid doubt, a New Zealand citizen who is a national of 1 or more other countries and who wishes to enter New Zealand other than as a New Zealand citizen must apply for entry permission in the prescribed manner.

Compare: 1987 No 74 s 126(1), (3)

Section 103(1)(d)(iv): replaced, on 6 November 2015, by section 29(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 103(1)(da): inserted, on 7 May 2015, by section 29(2) of the Immigration Amendment Act 2015 (2015 No 48).

104 New Zealand citizens arriving in New Zealand to be photographed

(1) Subsection (2) applies to a person who—

(a) arrives in New Zealand; and

(b) is entering New Zealand as a New Zealand citizen; and

(c) presents one of the following types of passport:

(i) a New Zealand passport; or

(ii) a foreign passport containing an endorsement of a type described in section 384; or

(iii) a foreign passport containing a returning resident's visa (within the meaning of section 2(1) of the former Act).

(2) The person must allow himself or herself to be photographed to confirm his or her New Zealand citizenship.

(3) A photograph taken under subsection (2) (including any electronic record of the photograph) may be compared with—

(a) information in the person's passport; or

(b) information held by the department of State for the time being responsible for the administration of the Passports Act 1992; or

(c) if the person does not hold a New Zealand passport, information held by the Department.

(4) A photograph taken under subsection (2) must not be retained by the Department if the fact of the person's New Zealand citizenship is confirmed.

(5) A photograph taken under subsection (2) that does not confirm the fact of the person's New Zealand citizenship may be retained for the purposes of administering this Act.

(6) The obligation in subsection (2)—

(a) is in addition to any requirements prescribed for the purposes of section 103(1)(e) that may apply; but

(b) is subject to any prescribed exemptions made in accordance with section 402(l).

(7) However, the obligation in subsection (2) does not apply if the person, before arriving in New Zealand, has already allowed himself or herself to be photographed in accordance with section 99.

Section 104: not yet in force.

105 Responsibilities of internationally ticketed passengers travelling by air within New Zealand

(1) Where an internationally ticketed passenger is using air travel for a domestic sector, this section applies to the passenger from the time at which the passenger enters the departure hall at the commencement of the domestic sector until

the time at which he or she leaves the arrival hall at the end of the domestic sector.

(2) Every person to whom this section applies must produce for inspection on demand by an immigration officer the person's passport or certificate of identity and the person's boarding pass or travel tickets, or both, to enable the officer to determine whether the person is entitled to be in New Zealand with or without a visa under this Act.

(3) Every passport, certificate of identity, boarding pass, or travel ticket produced by a person to an immigration officer under subsection (2)—

(a) must, if the person is a New Zealand citizen or holds a visa and has been granted entry permission, be inspected immediately and returned to the person as soon as the inspection is concluded; or

(b) may, if the person does not hold a visa or has not been granted entry permission, be retained by the immigration officer, but must be returned to the person on the person's departure from New Zealand.

(4) In this section and section 106,—

customs airport means an aerodrome designated as a customs airport under section 9 of the Customs and Excise Act 1996

domestic passenger—

(a) means a passenger who has an entitlement to air travel for a domestic sector on either—

(i) an aircraft that begins its journey outside New Zealand and, in the course of that journey, enters New Zealand and travels between at least 2 customs airports in New Zealand; or

(ii) an aircraft that begins its journey at a customs airport in New Zealand and, in the course of that journey, travels to at least 1 other customs airport in New Zealand before leaving New Zealand; but

(b) does not include an internationally ticketed passenger

domestic sector means a journey from one customs airport to another within New Zealand

internationally ticketed passenger means a person who has an entitlement to air travel for a domestic sector, the entitlement being included in travel tickets for an international journey that—

(a) began outside New Zealand; or

(b) began inside New Zealand and is to continue outside New Zealand.

Compare: 1987 No 74 s 126A

106 Responsibilities of domestic passengers travelling by air within New Zealand

(1) Where any domestic passenger is using air travel for a domestic sector, this section applies to the passenger from the time at which the passenger enters the departure hall at the commencement of the domestic sector until the time at which he or she leaves the arrival hall at the end of the domestic sector.

(2) Every person to whom this section applies must—

(a) produce for inspection on demand by an immigration officer the following documents as the officer may specify:

(i) the person's boarding pass:

(ii) the person's travel tickets:

(iii) if carried by the person, his or her passport or certificate of identity:

(iv) any other prescribed document; or

(b) if the person is unable to produce the specified document or documents, complete a form approved and issued for the purpose by the chief executive under section 381.

(3) A demand under subsection (2) may be made of a person only for the purpose of enabling the immigration officer to establish the person's identity or the person's entitlement to air travel for a domestic sector, or both.

(4) Every boarding pass, travel ticket, passport, certificate of identity, or other document produced by a person to an immigration officer under subsection (2) must be either—

(a) inspected immediately and returned to the person as soon as the inspection has concluded; or

(b) retained by the immigration officer for as long as is necessary for the officer to determine whether he or she wishes to exercise any power under this Act in relation to the person or the document.

(5) Nothing in this section limits the exercise by an immigration officer of any power contained in any other provision of this Act.

Compare: 1987 No 74 s 126B

Entry permission

107 Effect of entry permission or refusal of entry permission

(1) A person granted entry permission to New Zealand may enter New Zealand.

(2) The grant of entry permission has no effect unless the person also holds a visa.

(3) Entry permission is granted by the Minister or an immigration officer.

(4) The effect of a refusal to grant a person entry permission to New Zealand is that—

(a) any visa the person holds is cancelled; and

(b) if the person has arrived in New Zealand, the person is liable for turnaround.

108 Decisions on entry permission in relation to residence class visa holders

(1) The holder of a permanent resident visa must be granted entry permission.

(2) The holder of a resident visa granted in New Zealand must be granted entry permission.

(3) The holder of a resident visa granted outside New Zealand must be granted entry permission if it is his or her second or subsequent entry to New Zealand as the holder of the visa.

(4) If the holder of a resident visa granted outside New Zealand intends travelling to New Zealand for the first time as the holder of the visa and applies for entry permission under section 98(1),—

(a) the Minister or, subject to any special direction, an immigration officer may, in his or her discretion,—

(i) grant entry permission to the person; or

(ii) refuse entry permission to the person; and

(b) the Minister may, by special direction, impose further conditions on the visa, or vary or cancel any conditions that would otherwise apply to the visa.

(5) If the holder of a resident visa arrives in New Zealand for the first time as the holder of the visa and the visa was granted outside New Zealand,—

(a) the Minister or, subject to any special direction, an immigration officer may, in his or her discretion,—

(i) grant entry permission to the person; or

(ii) refuse entry permission to the person; and

(b) the Minister may, by special direction, impose further conditions on the visa, or vary or cancel any conditions that would otherwise apply to the visa.

(6) The Minister's or immigration officer's decision under subsection (4)(a) or (5)(a) must be made, and any discretion exercised, in terms of the residence instructions applicable at the time the person applied for the visa.

(7) For the purposes of subsections (4) and (5), the following matters are matters for the discretion of the Minister or immigration officer, as the case may be, and, subject to section 187(1)(c), no appeal lies against his or her decision, whether to a court, the Tribunal, the Minister, or otherwise:

(a) a decision to grant the visa holder entry permission:

(b) a decision to grant the visa holder entry permission, but to impose, vary, or cancel any conditions of the visa.

(8) Subsection (7) does not limit or affect the right of the person to bring review proceedings.

(9) Nothing in this section prevents the Minister, in his or her absolute discretion, from granting entry permission to a person as an exception to residence instructions.

109 Decisions on entry permission in relation to temporary entry class visa holders

(1) The Minister or, subject to any special direction, an immigration officer may, in his or her discretion,—

(a) grant the holder of a temporary entry class visa entry permission on the basis of his or her visa; or

(b) in accordance with section 82, cancel the visa of the holder of a temporary entry class visa, grant a limited visa in its place, and grant the person entry permission on the basis of the limited visa; or

(c) refuse the holder of a temporary entry class visa entry permission.

(2) The Minister or an immigration officer may, in his or her discretion, grant the holder of a temporary entry class visa entry permission on the basis of his or her visa but impose further conditions, or vary or cancel any conditions that would otherwise apply to the visa.

(3) The Minister may also, by special direction, impose further conditions on a temporary entry class visa subject to restricted temporary entry instructions, or vary or cancel any conditions that would otherwise apply to the visa, and grant the holder entry permission.

(4) A decision under subsection (1) that relates to a temporary entry class visa of a type subject to restricted temporary entry instructions must be made in terms of the temporary entry instructions applicable at the time the person applied for the visa.

(5) For the purposes of subsections (1) to (3), the following matters are matters for the discretion of the Minister or immigration officer, as the case may be, and no appeal lies against his or her decision, whether to a court, the Tribunal, the Minister, or otherwise:

(a) a decision to grant the visa holder entry permission on the basis of the existing temporary entry class visa:

(b) a decision to grant the visa holder entry permission on the basis of the existing temporary entry class visa, but to impose, vary, or cancel conditions relating to stay in New Zealand:

(c) a decision to refuse the visa holder entry permission.

(6) Subsection (5) does not limit or affect the right of the person to bring review proceedings.

(7) Nothing in this section prevents—

(a) the Minister or an immigration officer, in his or her discretion, from granting entry permission to the holder of a temporary entry class visa (other than a holder of a temporary entry class visa of a type subject to restricted temporary entry instructions) as an exception to temporary entry instructions:

(b) the Minister, in his or her absolute discretion, from granting entry permission to the holder of a temporary entry class visa of a type subject to restricted temporary entry instructions, as an exception to the restricted temporary entry instructions.

Section 109(6): amended, on 7 May 2015, by section 30 of the Immigration Amendment Act 2015 (2015 No 48).

109A Form of entry permission

(1) Entry permission is granted by being entered and retained in the records (whether electronic or physical) of the Department in a manner determined by the chief executive.

(2) Entry permission may (but need not) be evidenced by an endorsement in a passport or certificate of identity.

(3) To avoid doubt, no electronic or physical record is required to be created for entry permission that is deemed to be granted by or under this Act.

Section 109A: inserted, on 7 May 2015, by section 31 of the Immigration Amendment Act 2015 (2015 No 48).

110 Applicant for entry permission to provide address

A person who applies for entry permission must provide a contact address and an address for service.

(a) *[Repealed]*

(b) *[Repealed]*

(c) *[Repealed]*

Section 110: amended, on 7 May 2015, by section 32(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 110(a): repealed, on 7 May 2015, by section 32(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 110(b): repealed, on 7 May 2015, by section 32(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 110(c): repealed, on 7 May 2015, by section 32(2) of the Immigration Amendment Act 2015 (2015 No 48).

111 Collection of biometric information

(1) An immigration officer may require a person who applies for entry permission (irrespective of whether the application is still being considered, or whether entry permission has been granted or refused) to provide biometric information—

(a) at any time before the person leaves the immigration control area, designated place, or prescribed place at which the application is made; and

(b) if the application is not made in New Zealand, at any time before the person leaves the immigration control area or prescribed place at which he or she arrives in New Zealand.

(2) If a person refuses to allow the biometric information to be collected, the Minister or an immigration officer may—

(a) refuse to grant entry permission; or

(b) revoke any entry permission already granted.

(3) Entry permission may be revoked at any time before the person leaves the immigration control area, designated place, or prescribed place.

(4) A revocation under this section is made by entry on the records of the Department, and takes effect immediately.

(5) This section does not apply to persons who, in accordance with regulations made under section 400(l), are exempt from providing biometric information.

(6) In this section, **designated place** means a place designated by the chief executive under section 383.

Section 111: replaced, on 7 May 2015, by section 33 of the Immigration Amendment Act 2015 (2015 No 48).

112 Obligation to inform of all relevant facts, including changed circumstances

(1) It is the responsibility of an applicant for entry permission to ensure that all information, evidence, and submissions that the applicant wishes to have considered in support of the application are provided when the application is made.

(2) The Minister or immigration officer considering the application—

(a) is not obliged to seek any further information, evidence, or submissions; and

(b) may determine the application on the basis of the information, evidence, and submissions provided.

(3) It is also the responsibility of an applicant for entry permission to inform the Minister or an immigration officer of any relevant fact, including any material change in circumstances that has occurred between the grant of a visa and the application for entry permission on the basis of that visa, if that fact or change in circumstances may affect the decision on the application.

(4) Without limiting the scope of the expression **material change in circumstances** in subsection (3), such a change may relate to the applicant or another person included in the application, and may relate to any matter relevant to this Act or immigration instructions.

(5) Failure to comply with the obligation set out in subsection (3) must be treated as concealing relevant information for the purposes of section 157 or 158.

(6) It is sufficient grounds for the Minister or an immigration officer to refuse to grant entry permission to a person if the Minister or officer is satisfied that the person,—

(a) in applying for entry permission, whether personally or through an agent, submitted false or misleading information or withheld relevant information that was potentially prejudicial to the grant of the permission; or

(b) did not ensure that the Minister or an immigration officer was informed of any material change in circumstances (within the meaning of subsection (3)) between the time of being granted a visa and the time of applying for entry permission.

Section 112(5): amended, on 7 May 2015, by section 34(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 112(6): amended, on 7 May 2015, by section 34(2) of the Immigration Amendment Act 2015 (2015 No 48).

113 Revocation of entry permission for administrative error

(1) An immigration officer may revoke a person's entry permission if the immigration officer believes on reasonable grounds that the entry permission was granted as a result of an administrative error.

(2) Entry permission may be revoked at any time before the person leaves the immigration control area where the error was made.

(3) If the person has been granted entry permission outside New Zealand, entry permission may be revoked at any time before—

(a) the person leaves the place designated by the chief executive under section 383 where the error was made; or

(b) the person leaves the arrival hall of the airport or port at which he or she arrived in New Zealand.

(4) A revocation under this section is made by entry on the records of the Department, and takes effect immediately.

Turnaround provisions

114 Person failing to present and apply for entry permission

A constable may arrest a person, and present him or her to an immigration officer for the purposes of making decisions in relation to the person under this Act, if the constable has good cause to suspect that—

(a) the person arrived in New Zealand from another country elsewhere than at an immigration control area or other prescribed place, and did not comply with the requirements of section 103 or any regulations referred to in that section; or

(b) the person recently arrived in New Zealand from another country elsewhere than at an immigration control area or other prescribed place and will not comply with the requirements of section 103 or any regulations referred to in that section; or

(c) the person arrived in New Zealand from another country at an immigration control area or other prescribed place and did not comply with the requirements of section 103 or any regulations referred to in that section.

Compare: 1987 No 74 s 126(6)

115 Arrest, detention, and turnaround of persons

(1) This section applies to any person arriving in New Zealand from another country who—

(a) is a person to whom a visa waiver applies and who fails to apply for a visa and entry permission or is refused a visa; or

(b) is not a person to whom a visa waiver applies and is not the holder of a visa granted under this Act; or

(c) holds a visa but—

(i) the visa is subsequently cancelled under section 64(1)(b), (c), (d), or (e); or

(ii) the visa is cancelled under section 67 while the person is in an immigration control area (unless some other visa is granted to the person or the person is a New Zealand citizen); or

(d) is a stowaway; or

(e) after arriving in New Zealand, is a person whose transit visa is cancelled by an immigration officer under section 90; or

(f) is a transit passenger who holds a transit visa or is a person to whom a transit visa waiver applies, and the transit period concerned has expired.

(2) The person—

(a) is, for the purposes of this Act, unlawfully in New Zealand; and

(b) does not have any rights of appeal on humanitarian grounds so long as this section applies to the person; and

(c) is liable to be arrested and detained under Part 9; and

(d) is liable for turnaround.

Section 115(1)(f): replaced, on 6 November 2015, by section 35 of the Immigration Amendment Act 2015 (2015 No 48).

116 When section 115 ceases to apply to person

(1) Section 115 ceases to apply to a person upon the earliest of the following:

(a) the expiry of 72 hours after the person (including a stowaway) first reports or presents to an immigration officer after arriving in New Zea-

land, unless that person is sooner arrested and detained or otherwise dealt with under Part 9:

(b) in the case of a person whose visa is deemed to be cancelled under section 64(1)(d)(ii), 72 hours after the time when the person is physically located by an immigration officer or a constable following the person's leaving the immigration control area in contravention of the instruction of an immigration officer, unless the person is sooner arrested and detained or otherwise dealt with under Part 9:

(c) the person being granted a visa and entry permission:

(d) the expiry of a warrant of commitment issued under section 317 or 318, unless a further warrant of commitment is issued or the person is released on conditions under Part 9 or agrees to residence and reporting requirements under section 315:

(e) in the case of a person detained under a mass arrival warrant issued under section 317B, the expiry of the mass arrival warrant, unless a further warrant of commitment is issued under section 317, 317E, 318, or 323 or the person is released on conditions under Part 9, or agrees to residence and reporting requirements under section 315.

(2) This section is subject to section 117.

(3) For the purposes of this section, a stowaway is deemed to arrive in New Zealand at the time when the craft on which the stowaway is travelling crosses into the territorial limits of New Zealand.

Compare: 1987 No 74 s 128(1)–(5)

Section 116(1)(e): inserted, on 19 June 2013, by section 17 of the Immigration Amendment Act 2013 (2013 No 39).

117 When turnaround ceases to apply to person remanded in custody or imprisoned

(1) Subsection (2) applies to a person who is—

(a) liable for turnaround; and

(b) remanded in custody for suspected criminal offending, or imprisoned in a prison for criminal offending.

(2) The person remains liable for turnaround until the expiry of 72 hours after the person is released from custody or imprisonment.

(3) Subsection (4) applies to a person who is liable for turnaround and who is arrested and detained not later than 72 hours after he or she has been released from custody or imprisonment for suspected criminal offending, or criminal offending.

(4) The person remains liable for turnaround until the earliest of the following:

(a) the person is granted a visa and entry permission:

(b) the expiry of a warrant of commitment issued under section 317 or 318, unless a further warrant of commitment is issued or the person is released on conditions under Part 9 or agrees to residence and reporting requirements under section 315:

(c) in the case of a person detained under a mass arrival warrant issued under section 317B, the expiry of the mass arrival warrant, unless a further warrant of commitment is issued under section 317, 317E, 318, or 323 or the person is released on conditions under Part 9, or agrees to residence and reporting requirements under section 315.

Section 117(4): amended, on 19 June 2013, by section 17 of the Immigration Amendment Act 2013 (2013 No 39).

Section 117(4)(c): inserted, on 19 June 2013, by section 17 of the Immigration Amendment Act 2013 (2013 No 39).

Obligations in relation to departure from New Zealand

118 Obligations of carriers, and persons in charge, of craft

(1) The carrier, and the person in charge, of a craft leaving New Zealand have the following responsibilities:

(a) to allow the following persons to board the craft for passage from New Zealand:

(i) any person being deported:

(ii) any person liable for turnaround:

(b) in respect of such a person who is delivered to the craft by a constable or an immigration officer, to take all such reasonable steps (including the use of reasonable force) as may be necessary to detain that person on board the craft until it has left the territorial limits of New Zealand:

(c) to report to an immigration officer immediately before the departure of the craft details of any crew member or person of a class prescribed for the purposes of this section who—

(i) was on board the craft when it arrived in New Zealand; and

(ii) is not then on board the craft.

(2) The carrier of a craft leaving New Zealand also has the following responsibilities:

(a) to provide passage from New Zealand at the cost in all respects of the carrier, or to bear the cost of passage from New Zealand by any other carrier, of any person—

(i) who was on board the craft, or any other craft operated by the carrier, when it arrived in New Zealand and did not hold a visa permitting travel to New Zealand and who, on arrival in New Zealand, was—

(A) refused a visa and entry permission; or

(B) granted a visa and entry permission, but then had that entry permission revoked; or

(ii) who arrived in New Zealand as a member of the crew of the craft, or of any other craft operated by the carrier, and who remained unlawfully in New Zealand after the departure of that craft:

(b) to pay any costs incurred by the Crown in detaining and maintaining a person described in paragraph (a) pending the person's departure from New Zealand.

(3) Subsections (1) and (2) are subject to any applicable special direction or to regulations made under section 400.

(4) The responsibility of the carrier and person in charge under subsection (1)(a) is not affected by the class or type of seat available on the craft, but is subject to—

(a) the safety of the craft; and

(b) the safety of the other persons on the craft; and

(c) in relation to a person being deported, an offer to pay the cost of passage having been received.

Compare: 1987 No 74 s 125(3), (4), (5)

Section 118(2)(a)(i): replaced, on 7 May 2015, by section 36 of the Immigration Amendment Act 2015 (2015 No 48).

119 Obligations of persons leaving New Zealand

(1) Except as provided in regulations made under this Act, or in any special direction, every person leaving New Zealand has the following responsibilities:

(a) to present himself or herself to an immigration officer at an immigration control area or any other prescribed place:

(b) to comply with any direction of an immigration officer while at such an area or place:

(c) to provide such information and complete such documentation as may be prescribed.

(2) Where a person leaving New Zealand is, by reason of age or disability, incapable of complying with any of the requirements of subsection (1), it is the responsibility of the parent or guardian or other person for the time being having the care of that person to comply with those requirements on that person's behalf.

Compare: 1987 No 74 s 126(2), (3)

120 Persons other than New Zealand citizens leaving New Zealand to allow biometric information to be collected

(1) A person leaving New Zealand who is not a New Zealand citizen must allow biometric information to be collected from him or her.

(2) The requirement in subsection (1) does not apply if the person is exempt from providing the information in accordance with regulations made under section 400(l).

Special provision for emergencies, etc

121 Persons deemed not to leave New Zealand in certain circumstances

(1) For the purposes of this Act, a person is deemed not to leave New Zealand if he or she departs for another country on any craft and, before arriving in another country,—

(a) is forced to return to New Zealand by reason of any emergency affecting the craft; or

(b) returns to New Zealand because of any other emergency or circumstances beyond that person's control.

(2) Subsection (1) does not apply to a person liable for turnaround.

122 Special provisions relating to persons returning to New Zealand in emergency or other circumstances beyond their control

Subject to sections 15 and 16, where the holder of a temporary entry class visa departs from New Zealand for another country on any craft and—

(a) before arriving in any other country is forced to return, or returns, to New Zealand by reason of any emergency affecting the craft, or because of any other emergency or circumstances beyond the person's control; and

(b) the person's visa has expired, or is due to expire, at any time between the person's departure from New Zealand and the date 14 days after the person's return to New Zealand,—

an immigration officer must, on application by the person, grant him or her a temporary entry class visa (current until a date not earlier than the 14th day following that return) and entry permission.

Compare: 1987 No 74 s 127

Protection for carriers, and persons in charge, of craft

123 Protection for carriers, and persons in charge, of craft

A person who in good faith imposes reasonable measures, including restraint or reasonable force, on another person in accordance with his or her responsibil-

ities under section 101 or 118 is not guilty of an offence and is not liable to any civil proceedings in respect of those measures.

Compare: 1987 No 74 s 125(9)

Part 5
Refugee and protection status determinations

124 Purpose of Part

The purpose of this Part is to provide a statutory basis for the system by which New Zealand—

(a) determines to whom it has obligations under the United Nations Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees; and

(b) codifies certain obligations, and determines to whom it has these obligations, under—

(i) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

(ii) the International Covenant on Civil and Political Rights.

Compare: 1987 No 74 s 129A

125 Refugee or protection status to be determined under this Act

(1) Every person who seeks recognition as a refugee in New Zealand under the Refugee Convention must have that claim determined in accordance with this Act.

(2) Every person who seeks recognition as a protected person in New Zealand must have that claim determined in accordance with this Act.

(3) Every question as to whether a person should continue to be recognised as a refugee in New Zealand or as a protected person in New Zealand must be determined in accordance with this Act.

(4) Nothing in subsection (1) affects section 126.

Compare: 1987 No 74 s 129C

126 Recognition of refugees selected outside New Zealand

A person must be recognised as a refugee in New Zealand, without the need for submission and determination of a claim under this Part, if, whether before or after the commencement of this section, he or she has been—

(a) recognised as a refugee outside New Zealand; and

(b) brought to New Zealand under a government mandated programme on the basis of that recognition.

Compare: 1987 No 74 s 129L(2)

127 Context for decision making

(1) Every claim under this Part must be determined by a refugee and protection officer.

(2) In carrying out his or her functions under this Act, a refugee and protection officer must act—

(a) in accordance with this Act; and

(b) to the extent that a matter relating to a refugee or a person claiming recognition as a refugee is not dealt with in this Act, in a way that is consistent with New Zealand's obligations under the Refugee Convention.

(3) The text of the Refugee Convention is set out in Schedule 1.

Compare: 1987 No 74 s 129D

128 Matter not finally determined until expiry of appeal period or when appeal determined

A matter under this Part must not be treated as finally determined until—

(a) the expiry of the appeal period for any appeal relating to the matter; or

(b) if a person lodges an appeal, the appeal is determined.

Claims for recognition as refugee or protected person

129 Recognition as refugee

(1) A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the Refugee Convention.

(2) A person who has been recognised as a refugee under subsection (1) cannot be deported from New Zealand except in the circumstances set out in section 164(3).

130 Recognition as protected person under Convention Against Torture

(1) A person must be recognised as a protected person in New Zealand under the Convention Against Torture if there are substantial grounds for believing that he or she would be in danger of being subjected to torture if deported from New Zealand.

(2) Despite subsection (1), a person must not be recognised as a protected person in New Zealand under the Convention Against Torture if he or she is able to access meaningful domestic protection in his or her country or countries of nationality or former habitual residence.

(3) For the purposes of determining whether there are substantial grounds for belief under subsection (1), the refugee and protection officer concerned must take into account all relevant considerations, including, if applicable, the existence in the country concerned of a consistent pattern of gross, flagrant, or mass violations of human rights.

(4) A person who has been recognised as a protected person under subsection (1) cannot be deported from New Zealand except in the circumstances set out in section 164(4).

(5) In this section, **torture** has the same meaning as in the Convention Against Torture.

131 Recognition as protected person under Covenant on Civil and Political Rights

(1) A person must be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if there are substantial grounds for believing that he or she would be in danger of being subjected to arbitrary deprivation of life or cruel treatment if deported from New Zealand.

(2) Despite subsection (1), a person must not be recognised as a protected person in New Zealand under the Covenant on Civil and Political Rights if he or she is able to access meaningful domestic protection in his or her country or countries of nationality or former habitual residence.

(3) For the purposes of determining whether there are substantial grounds for belief under subsection (1), the refugee and protection officer concerned must take into account all relevant considerations, including, if applicable, the existence in the country concerned of a consistent pattern of gross, flagrant, or mass violations of human rights.

(4) A person who has been recognised as a protected person under subsection (1) cannot be deported from New Zealand except in the circumstances set out in section 164(4).

(5) For the purposes of this section,—

(a) treatment inherent in or incidental to lawful sanctions is not to be treated as arbitrary deprivation of life or cruel treatment, unless the sanctions are imposed in disregard of accepted international standards:

(b) the impact on the person of the inability of a country to provide health or medical care, or health or medical care of a particular type or quality, is not to be treated as arbitrary deprivation of life or cruel treatment.

(6) In this section, **cruel treatment** means cruel, inhuman, or degrading treatment or punishment.

132 Claims not to be accepted from certain persons

(1) A refugee and protection officer must not consider a claim by a person who is—

(a) a New Zealand citizen; or

(b) a resident or permanent resident, unless—

(i) the person has been served with a deportation liability notice; or

(ii) the person is named in an Order in Council made under section 163.

(2) Nothing in this section affects the power of a refugee and protection officer to re-open a claim for further consideration under any of sections 143 to 147.

Compare: 1987 No 74 s 129K

133 How claim made

(1) A claim is made as soon as a person signifies his or her intention to seek recognition as a refugee or a protected person in New Zealand to a representative of the Department or to a constable.

(2) Once a claim is made, the claimant must, on request by a representative of the Department, confirm the claim in writing in the prescribed manner.

(3) A claimant must as soon as possible endeavour to provide to a refugee and protection officer all information relevant to his or her claim, including—

(a) a statement of the grounds for the claim seeking recognition as a refugee or a protected person; and

(b) a statement of any grounds for any other potential claim seeking recognition as a refugee or a protected person.

(4) If a claimant is aware that any member of his or her immediate family who is in New Zealand is seeking recognition as a refugee or a protected person, the claimant must, as soon as possible after making a claim, inform a refugee and protection officer and, if possible, state whether the family member's claim is on different grounds.

(5) A claimant must provide a refugee and protection officer with a contact address and an address for service.

Compare: 1987 No 74 s 129G(1)–(4)

Section 133(5): replaced, on 7 May 2015, by section 37 of the Immigration Amendment Act 2015 (2015 No 48).

134 Whether to accept claim for consideration

(1) In determining whether to accept a claim for consideration, a refugee and protection officer may take into account whether,—

(a) in light of any international arrangement or agreement, the claimant may have lodged, or had the opportunity to lodge, a claim for refugee status in another country:

(b) in light of any international arrangement or agreement, the claimant may have lodged, or had the opportunity to lodge, a claim for protection in another country:

(c) 1 or more of the circumstances relating to the claim were brought about by the claimant—

(i) acting otherwise than in good faith; and

(ii) for a purpose of creating grounds for recognition under section 129.

(2) A refugee and protection officer may decline to accept a claim for consideration where,—

(a) in light of any international arrangement or agreement, the claimant may have lodged, or had the opportunity to lodge, a claim for refugee status in another country:

(b) in light of any international arrangement or agreement, the claimant may have lodged, or had the opportunity to lodge, a claim for protection in another country.

(3) A refugee and protection officer must decline to accept for consideration a claim for recognition as a refugee if the officer is satisfied that 1 or more of the circumstances relating to the claim were brought about by the claimant—

(a) acting otherwise than in good faith; and

(b) for a purpose of creating grounds for recognition under section 129.

(4) For the purposes of determining the matter in subsection (3), the refugee and protection officer must not treat the actions of any other person in relation to the claim or the claimant as a mitigating factor.

(5) In this section, **international arrangement or agreement** means an arrangement or agreement—

(a) between New Zealand and 1 or more other countries in respect of the processing of claims for refugee or protection status; and

(b) that was entered into only after the Minister was satisfied that—

(i) the country is a party to the Refugee Convention, the Convention Against Torture, and the Covenant on Civil and Political Rights; and

(ii) the country has appropriate processes for dealing with refugee and protection claims.

135 Claimant responsible for establishing claim

(1) It is the responsibility of a claimant to establish his or her claim for recognition under section 129, 130, or 131 as a refugee or a protected person.

(2) To this end, the claimant must ensure that, before a refugee and protection officer makes a determination on his or her claim, all information, evidence, and submissions—

(a) that the claimant wishes to have considered in support of the claim are provided to the refugee and protection officer; and

(b) that the claimant would wish to have considered in support of any other potential claim under section 129, 130, or 131 are provided to the refugee and protection officer.

Compare: 1987 No 74 s 129G(5)

135A Suspension of determination of claim

(1) This section applies to a claim if the processing of the claim is suspended in accordance with regulations made under section 400.

(2) For the duration of the suspension, a refugee and protection officer must not—

(a) determine the claim in accordance with sections 136 and 137; or

(b) make a decision on the claim in accordance with section 138.

Section 135A: inserted, on 19 June 2013, by section 7 of the Immigration Amendment Act 2013 (2013 No 39).

136 How refugee and protection officer to determine claim

(1) For the purpose of determining a claim, a refugee and protection officer must determine the matters set out in section 137.

(2) In doing so, the refugee and protection officer may seek information from any source, but is not obliged to seek any information, evidence, or submissions further to that provided by the claimant.

(3) The refugee and protection officer may determine the procedures that will be followed on the claim, subject to—

(a) this Part; and

(b) any regulations made for the purposes of this Part; and

(c) any general instructions given by the chief executive.

(4) To avoid doubt, the refugee and protection officer may determine the claim on the basis only of the information, evidence, and submissions provided by the claimant concerned.

Compare: 1987 No 74 s 129G(6), (7)

137 Matters to be determined by refugee and protection officer

(1) For each claim accepted for consideration, a refugee and protection officer must determine, in the following order:

(a) whether to recognise the claimant as a refugee on the ground set out in section 129; and

(b) whether to recognise the claimant as a protected person on the ground set out in section 130; and

(c) whether to recognise the claimant as a protected person on the ground set out in section 131.

(2) For each claim accepted for consideration, a refugee and protection officer must also determine, as part of the process in respect of a determination under

subsection 1(b) or (c), whether there are serious reasons for considering that the claimant has—

(a) committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; or

(b) committed a serious non-political crime outside New Zealand before entering New Zealand; or

(c) been guilty of acts contrary to the purposes and principles of the United Nations.

(3) To avoid doubt, a determination made under subsection (2)—

(a) must not be used as grounds to refuse a claim by the person concerned for recognition as a protected person; and

(b) is relevant only if the person is recognised as a protected person; and

(c) if answered in the affirmative, requires the Minister to determine the immigration status of the protected person in accordance with section 139.

(4) For each claim accepted for consideration, a refugee and protection officer must also determine whether the claimant has the protection of another country or has been recognised as a refugee by another country and can be received back and protected there without risk of being returned to a country where he or she would be at risk of circumstances that would give rise to grounds for his or her recognition as a refugee or a protected person in New Zealand.

(5) To avoid doubt, a refugee and protection officer—

(a) in determining the matters specified in this section, may make findings of credibility or fact:

(b) must determine all the matters described in subsections (1), (2), and (4), regardless of whether the claim was made only on 1 or 2 of the 3 grounds set out in sections 129 to 131.

138 Decision on claim

(1) A refugee and protection officer must recognise a person as—

(a) a refugee if satisfied that the grounds for recognition in section 129 have been met:

(b) a protected person if satisfied that the grounds for recognition in section 130 or 131 (or both) have been met.

(2) Despite subsection (1), a refugee and protection officer may refuse to recognise a person as a refugee or a protected person if he or she is satisfied that the person has the protection of another country or has been recognised as a refugee by another country and can be received back and protected there without risk of being returned to a country where he or she would be at risk of circumstan-

ces that would give rise to grounds for his or her recognition as a refugee or a protected person in New Zealand.

(3) The decision of the refugee and protection officer is final, unless overturned by the Tribunal on appeal under section 194.

(4) The refugee and protection officer must notify the claimant, in the prescribed manner, of—

(a) the officer's decision on the claim; and

(b) the reasons for the decision, which must contain the information required under section 23 of the Official Information Act 1982 as if the decision were a response to a request to which that section applies; and

(c) the officer's determination in relation to section 137(2); and

(d) the claimant's right of appeal to the Tribunal, where a claim for recognition on any ground has been declined.

(5) Once a decision on a claim is made and notified to a claimant, any refugee and protection officer may, in his or her absolute discretion, re-open the claim for further consideration under any of sections 143 to 147.

Compare: 1987 No 74 s 129I

139 Minister to decide immigration status of protected person who may have committed certain crimes or been guilty of certain acts

The Minister must make any decision about a protected person's immigration status if a refugee and protection officer has determined under section 137(2) that there are serious reasons for considering that the person has committed a crime or been guilty of any act described in that section.

140 Limitation on subsequent claims

(1) A refugee and protection officer must not consider a subsequent claim for recognition as a refugee or a protected person unless the officer is satisfied—

(a) that there has been a significant change in circumstances material to the claim since the previous claim was determined; and

(b) the change in 1 or more of the circumstances was not brought about by the claimant—

(i) acting otherwise than in good faith; and

(ii) for a purpose of creating grounds for recognition under any of sections 129 to 131.

(2) For the purposes of determining the matter in subsection (1), the refugee and protection officer must not treat the actions of any other person in relation to the claim or the claimant as a mitigating factor.

(3) A refugee and protection officer may refuse to consider a subsequent claim for recognition as a refugee or a protected person if the officer is satisfied that the claim—

(a) is manifestly unfounded or clearly abusive; or

(b) repeats any claim previously made (including a subsequent claim).

Compare: 1987 No 74 s 129J

Section 140(1): amended, on 19 June 2013, by section 8(1) of the Immigration Amendment Act 2013 (2013 No 39).

Section 140(1)(b)(ii): amended, on 19 June 2013, by section 8(2) of the Immigration Amendment Act 2013 (2013 No 39).

Section 140(3)(b): replaced, on 19 June 2013, by section 8(3) of the Immigration Amendment Act 2013 (2013 No 39).

141 Procedure on subsequent claims

(1) The procedures specified in sections 135 to 139 apply to any subsequent claim accepted for consideration, except that any appeal to the Tribunal must be made under section 195.

(2) In a subsequent claim, a claimant may not challenge any finding of credibility or fact made by a refugee and protection officer (or by a refugee status officer under the former Act) or the Tribunal (or by the Refugee Status Appeals Authority under the former Act) in relation to a previous claim by the claimant, and the refugee and protection officer determining the subsequent claim may rely on those findings.

142 Claim treated as withdrawn if claimant leaves New Zealand

If a claimant leaves New Zealand, his or her claim (including any subsequent claim) under this Part must be treated as withdrawn.

Compare: 1987 No 74 s 129V

Cessation or cancellation of recognition

143 Cessation of recognition as refugee or protected person

A refugee and protection officer may cease to recognise a person as a refugee or a protected person, as the case may be, if—

(a) 1 of the following applies:

(i) the original determination to recognise the person as a refugee or a protected person was made by a refugee and protection officer; or

(ii) the original determination to recognise the person as a refugee was made under the former Act by a refugee status officer or before 1 October 1999; or

(iii) the person was recognised as a refugee outside New Zealand and has travelled to New Zealand under a government mandated programme on the basis of that recognition; and

(b) 1 or more of the following apply:

(i) the Refugee Convention has ceased to apply to the person in terms of Article 1C:

(ii) there are no longer substantial grounds for believing that the person, if deported from New Zealand, would be in danger of being subjected to torture (as defined in section 130(5)):

(iii) there are no longer substantial grounds for believing that the person, if deported from New Zealand, would be in danger of being subjected to arbitrary deprivation of life or cruel treatment (as defined in section 131(6)).

144 Application to Tribunal for cessation of recognition as refugee or protected person

(1) A refugee and protection officer may apply to the Tribunal for a determination as to whether a person's recognition as a refugee or a protected person should cease if the original determination to recognise the person as a refugee or a protected person was made by the Tribunal (or by the Refugee Status Appeals Authority under the former Act).

(2) On an application made under subsection (1), the Tribunal may cease to recognise a person as a refugee or a protected person if 1 or more of the circumstances referred to in section 143(b) apply in respect of the person.

145 Cancellation of New Zealand citizen's recognition as refugee or protected person

A refugee and protection officer may cancel the recognition of a New Zealand citizen as a refugee or a protected person, as the case may be, if—

(a) 1 of the following applies:

(i) the original determination to recognise the person as a refugee or a protected person was made by a refugee and protection officer; or

(ii) the original determination to recognise the person as a refugee was made under the former Act by a refugee status officer or before 1 October 1999; or

(iii) the person was recognised as a refugee outside New Zealand and has travelled to New Zealand under a government mandated programme on the basis of that recognition; and

(b) 1 or more of the following apply in respect of the person:

(i) the refugee and protection officer has determined that the recognition may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information:

(ii) the person has been convicted of an offence where it is established that the person acquired recognition as a refugee or a protected

person by fraud, forgery, false or misleading representation, or concealment of relevant information:

(iii) the refugee and protection officer has determined that the matters dealt with in Articles 1D, 1E, and 1F of the Refugee Convention may not have been able to be properly considered by a refugee and protection officer (or a refugee status officer under the former Act) for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information; and

(c) the refugee and protection officer has determined that the person is not a refugee or a protected person.

146 Cancellation of person's recognition as refugee or protected person (other than New Zealand citizen)

(1) A refugee and protection officer may cancel the recognition of a person who is not a New Zealand citizen as a refugee or a protected person, as the case may be, if—

(a) 1 of the following applies:

(i) the original determination to recognise the person as a refugee or a protected person was made under this Act; or

(ii) the original determination to recognise the person as a refugee was made under the former Act or before 1 October 1999; or

(iii) the person was recognised as a refugee outside New Zealand and has travelled to New Zealand under a government mandated programme on the basis of that recognition; and

(b) 1 or more of the circumstances referred to in section 145(b) apply in respect of the person; and

(c) the refugee and protection officer has determined that the person is not a refugee or a protected person.

(2) A person whose recognition as a refugee or a protected person is cancelled under this section—

(a) is liable for deportation under section 162; and

(b) has the rights of appeal set out in subsection (2) of that section.

147 Application to Tribunal for cancellation of New Zealand citizen's recognition as refugee or protected person

(1) A refugee and protection officer may apply to the Tribunal for a determination as to whether the recognition of a New Zealand citizen as a refugee or a protected person should be cancelled if—

(a) the original determination to recognise the person as a refugee or a protected person was made by the Tribunal; or

(b) the original determination to recognise the person as a refugee was made by the Refugee Status Appeals Authority under the former Act.

(2) On an application made under subsection (1), the Tribunal may cancel the recognition of a New Zealand citizen as a refugee or a protected person, as the case may be, if—

(a) 1 or more of the following apply in respect of the person:

(i) the Tribunal has determined that the recognition may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information; or

(ii) the person has been convicted of an offence where it is established that the person acquired recognition as a refugee or a protected person by fraud, forgery, false or misleading representation, or concealment of relevant information; or

(iii) the Tribunal has determined that the matters dealt with in Articles 1D, 1E, and 1F of the Refugee Convention may not have been able to be properly considered by the Tribunal or the Refugee Status Appeals Authority for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information; and

(b) the Tribunal has determined that the person is not a refugee or a protected person.

148 Procedures to be followed when refugee and protection officer making determination under section 143, 145, or 146

When making a determination under section 143, 145, or 146,—

(a) a refugee and protection officer must notify the person concerned of the matter that is being considered; and

(b) sections 135, 136(3), 138(4)(a), (b), and (d), 138(5), and 149 apply, with any necessary modifications, as if the matter being considered were a claim and the person concerned were a claimant.

Miscellaneous matters

149 Powers of refugee and protection officers

(1) In carrying out his or her functions under this Part in relation to a claimant or to a person whose recognition as a refugee or a protected person is being investigated, a refugee and protection officer may—

(a) require the person to supply such information, and within such times, as the officer reasonably requires:

(b) require the person to produce such documents in the person's possession or within the person's ability to obtain as the officer requires:

(c) inform the person that any other person may be required to produce or disclose relevant documents or information relating to the person, and require the other person to produce or disclose, as the case may be, any relevant documents or information relating to the person:

(d) if the officer has good cause to suspect that a person other than the person concerned has in his or her or its possession or control any document of the person concerned (including any passport or travel document), in the prescribed manner request that other person to produce that document:

(e) require the person to allow biometric information to be collected from him or her:

(f) require the person to attend an interview:

(g) seek information from any source:

(h) determine the claim or matter on the basis of the information, evidence, and submissions provided by the person.

(2) A person who is requested to produce a document under subsection (1)(d) is not entitled to refuse to comply with the request by reason only that the person concerned has a lien over the document.

(3) If a claimant, or a person whose recognition as a refugee or a protected person is being investigated, is detained in custody, a refugee and protection officer may require the person having custody of that person to—

(a) provide the refugee and protection officer with access to the place where the person is being detained; and

(b) produce the person for interview; and

(c) make appropriate facilities available for the interview.

(4) Where a person who is required to attend an interview fails to attend at the appointed time and place, the refugee and protection officer may determine the claim or matter without conducting the interview.

Compare: 1987 No 74 s 129H

Section 149(1)(d): amended, on 7 May 2015, by section 38 of the Immigration Amendment Act 2015 (2015 No 48).

150 Special provision relating to claimants granted temporary visas

(1) This section applies to any person who—

(a) is a claimant to whom a temporary entry class visa has been granted, whether before or after the person became a claimant; or

(b) having been a person to whom paragraph (a) applies, ceases to be a claimant by virtue of his or her claim being declined.

(2) A person to whom this section applies may not, either before or after the expiry of the temporary entry class visa,—

(a) apply for a further visa of any class or type while in New Zealand; or

(b) while in New Zealand, request a special direction or make a request for the grant of a visa under section 61; or

(c) bring any appeal under section 187 to the Tribunal.

(3) Despite subsection (2)(a), a claimant may apply for a further temporary visa for such period as may be required for the claimant to be lawfully in New Zealand while his or her claim is determined.

(4) Nothing in this section prevents a person from bringing an appeal to the Tribunal under section 206.

(5) This section ceases to apply to a person if and when—

(a) the person is recognised as a refugee or a protected person; or

(b) the person leaves New Zealand; or

(c) the person is granted a visa (other than a temporary visa granted under the exception referred to in subsection (3)).

Compare: 1987, No 74 s 129U

151 Confidentiality to be maintained in respect of claimants, refugees, and protected persons

(1) Confidentiality as to the fact that a person is a claimant, a refugee, or a protected person, and as to the particulars relating to the person's claim or status, must at all times during and subsequent to the determination of the claim or other matter be maintained by all persons and, in a particular case, may require confidentiality to be maintained as to the very fact or existence of a claim or case, if disclosure of its fact or existence would—

(a) tend to identify the person concerned; or

(b) be likely to endanger the safety of any person.

(2) Despite subsection (1), the fact of a claim or particulars relating to a claim may be disclosed—

(a) for the purposes of determining the claim or matter, administering this Act, or determining any obligations, requirements, or entitlements of the claimant or other person concerned under any other enactment; or

(b) for the purposes of the maintenance of the law, including for the prevention, investigation, and detection of offences in New Zealand or elsewhere; or

(c) to the United Nations High Commissioner for Refugees (or a representative of the High Commissioner); or

(d) if the particulars relating to a claim are published in a manner that is unlikely to allow identification of the person concerned (whether in a published decision of the Tribunal under clause 19 of Schedule 2 or otherwise); or

(e) if, in the circumstances of the particular case, there is no serious possibility that the safety of the claimant or any other person would be endangered by the disclosure of the information.

(3) In determining whether information may be released under subsection (2)(e), the person considering whether to disclose the information may have regard to the protections that the person, agency, or body to whom the information is disclosed may apply to the information, including—

(a) any applicable requirements of the Privacy Act 1993; and

(b) any orders of the Tribunal or other court; and

(c) any protection mechanisms that the person, agency, or body itself must or may apply.

(4) If, in relation to a claim or particulars relating to a claim, the test in subsection (2)(e) is satisfied (the person concerned having considered the matters in subsection (3)),—

(a) the chief executive may publish the decision of a refugee and protection officer relating to the claim if the chief executive determines that, in the circumstances of the particular case, it is in the public interest to do so:

(b) the Attorney-General may, subject to any orders of the Tribunal, publish the decision of the Tribunal relating to the claim if the Attorney-General determines that, in the circumstances of the particular case, it is in the public interest to do so.

(5) To avoid doubt,—

(a) a refugee and protection officer may disclose information under subsection (2)(a) when carrying out his or her functions under section 136(2) or 149(1)(c) or (g):

(b) the chief executive may disclose information under subsection (2)(a) when collecting information on behalf of the Tribunal under section 229:

(c) the Tribunal may disclose information under subsection (2)(a) when carrying out its functions under section 228 or clause 10(1)(b) and (c) of Schedule 2:

(d) for the purposes of determining a claim, or cancelling the recognition of, or ceasing to recognise, a person as a refugee or a protected person, information may be disclosed under subsection (2)(a).

(6) Nothing in this section prevents the disclosure of the fact that a person is a claimant, a refugee, or a protected person, or disclosure of particulars in relation to a claimant, a refugee, or a protected person, to the extent that the person concerned—

(a) has expressly waived his or her right to confidentiality under this section; or

(b) by his or her words or actions, impliedly waived his or her right to confidentiality under this section.

152 Disclosure of information about claimant, refugee, or protected person by government agencies

(1) An officer or employee of any government agency may, for the purpose of assisting a refugee and protection officer or the Tribunal to determine a claim or investigate a matter involving a claimant or a refugee or a protected person in New Zealand, disclose information about that claimant, refugee, or person to the refugee and protection officer or the Tribunal.

(2) When requesting the assistance, the refugee and protection officer or the Tribunal must—

(a) inform the other officer or employee of the requirements of confidentiality in section 151; and

(b) require that officer or employee not to disclose information of the kind described in section 151(1) to any other agency, body, or person, except as provided for in that section.

(3) To avoid doubt, a refugee and protection officer or the Tribunal does not breach section 151 when requesting the assistance of a person under subsection (1).

Part 6
Deportation

153 Purpose of Part

(1) The purpose of this Part is to support the integrity of New Zealand's immigration system and the security of New Zealand by providing for the deportation of certain persons from New Zealand.

(2) To this end, this Part—

(a) specifies when a person is liable for deportation; and

(b) specifies how that liability must be communicated to the person; and

(c) sets out the consequences of the liability for the person; and

(d) specifies the only situations in which an appeal right exists in respect of that liability; and

(e) provides for the person's deportation to be executed without the need for further inquiries if no appeal is made or an appeal is unsuccessful.

Liability for deportation

154 Deportation liability if person unlawfully in New Zealand

(1) A person unlawfully in New Zealand is liable for deportation.

(2) A person unlawfully in New Zealand may, not later than 42 days after first becoming unlawfully in New Zealand, appeal on humanitarian grounds against his or her liability for deportation.

(3) Subsection (2) applies except if subsection (4) or (5) applies.

(4) If the person is unlawfully in New Zealand following an unsuccessful reconsideration under section 185 of a decision to decline his or her visa application, the person may appeal on humanitarian grounds against his or her liability for deportation not later than 42 days after the later of—

(a) the day on which the person became unlawfully in New Zealand; or

(b) the day on which the person received confirmation of the decision to decline his or her visa application.

(5) A person is not entitled to an appeal under subsection (2) if—

(a) the person is unlawfully in New Zealand following the cancellation of the person's visa under section 64(1)(ab); or

(b) the person has already had an opportunity (whether exercised or not) to appeal against his or her liability for deportation.

Section 154(3): amended, on 7 May 2015, by section 39(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 154(5): inserted, on 7 May 2015, by section 39(2) of the Immigration Amendment Act 2015 (2015 No 48).

155 Deportation liability if person's visa granted in error

(1) A person is liable for deportation if—

(a) the Minister or an immigration officer determines that the person's visa was granted as a result of an administrative error; and

(b) the visa was not cancelled under section 67; and

(c) no visa was granted to the person under section 68.

(2) The holder of a temporary visa or interim visa to whom this section applies has 14 days from the date of service of a deportation liability notice to give good reason why he or she should not be deported.

(3) Subsection (2) does not apply if—

(a) the person is the holder of a limited visa; or

(b) the Minister or an immigration officer determines that the person is an excluded person.

(4) A person liable for deportation under this section may, not later than 28 days after the date of service of a deportation liability notice, appeal to the Tribunal against his or her liability for deportation—

(a) on the facts and on humanitarian grounds, if the person holds a residence class visa; or

(b) on humanitarian grounds only, in the case of a person holding a temporary visa or an interim visa.

(5) However, subsection (4) does not apply if the person is liable for deportation under this section because the person re-entered New Zealand while he or she was subject to a period of prohibition on entry.

Section 155(5): inserted, on 7 May 2015, by section 40 of the Immigration Amendment Act 2015 (2015 No 48).

156 Deportation liability if visa held under false identity

(1) A person is liable for deportation if—

(a) the person is convicted of an offence where the identity of the person is established, and that identity is different to the identity under which the person holds a visa; or

(b) the Minister determines that the person holds a visa under a false identity.

(2) If a person is liable for deportation under this section and the visa is a temporary visa or interim visa,—

(a) the person may appeal to the Tribunal on humanitarian grounds not later than 42 days after first becoming unlawfully in New Zealand; and

(b) if subsection (1)(b) applies, the person has 14 days from the date of service of a deportation liability notice to give good reason why the deportation should not proceed.

(3) If a person is liable for deportation under this section and the visa is a residence class visa,—

(a) the person may appeal to the Tribunal on humanitarian grounds not later than 42 days after first becoming unlawfully in New Zealand; and

(b) if subsection (1)(b) applies, the person may, not later than 28 days after the date of service of a deportation liability notice, appeal to the Tribunal on the facts against his or her liability for deportation.

(4) For the purposes of subsections (2) and (3), a person to whom a visa has been granted in a false identity is deemed to have been unlawfully in New Zealand since—

(a) the date the person arrived in New Zealand, if he or she has held a visa in a false identity since that date; or

(b) the day after the date on which a visa granted in the person's actual identity expired, or was cancelled without another visa being granted, if he or she has held a visa in his or her actual identity after arriving in New Zealand.

157 Deportation liability of temporary entry class visa holder for cause

(1) A temporary entry class visa holder is liable for deportation if the Minister determines that there is sufficient reason to deport the temporary entry class visa holder.

(2) The person has 14 days from the date of service of the deportation liability notice to give good reason why deportation should not proceed.

(3) Subsection (2) does not apply if—

(a) the person is the holder of a limited visa; or

(b) the Minister determines that the person is an excluded person.

(4) A temporary visa holder or interim visa holder who is liable for deportation under this section may, not later than 28 days after the date of service of a deportation liability notice, appeal to the Tribunal on humanitarian grounds against his or her liability for deportation.

(5) For the purposes of subsection (1), **sufficient reason** includes, but is not limited to,—

(a) breach of conditions of the person's visa:

(b) criminal offending:

(c) other matters relating to character:

(d) concealing relevant information in relation to the person's application for a visa:

(e) a situation where the person's circumstances no longer meet the rules or criteria under which the visa was granted.

Section 157(5)(d): amended, on 7 May 2015, by section 41 of the Immigration Amendment Act 2015 (2015 No 48).

158 Deportation liability of residence class visa holder due to fraud, forgery, etc

(1) A residence class visa holder is liable for deportation if—

(a) the person is convicted of an offence where it is established that—

(i) any of the information provided in relation to the person's application, or purported application, for a residence class visa or entry permission was fraudulent, forged, false, or misleading, or any relevant information was concealed; or

(ii) any of the information provided in relation to the person's, or any other person's, application, or purported application, for a visa on the basis of which the residence class visa was granted was fraudulent, forged, false, or misleading, or any relevant information was concealed; or

(b) the Minister determines that—

(i) any of the information provided in relation to the person's application, or purported application, for a residence class visa or entry permission was fraudulent, forged, false, or misleading, or any relevant information was concealed; or

(ii) any of the information provided in relation to the person's, or any other person's, application, or purported application, for a visa on the basis of which the residence class visa was granted was fraudulent, forged, false, or misleading, or any relevant information was concealed.

(1A) Subsection (1) applies—

(a) whether or not the person holding the residence class visa is the person who—

(i) provided the information that is established or determined to be fraudulent, forged, false, or misleading; or

(ii) concealed the relevant information that is established or determined to have been concealed; and

(b) whether the visa was granted before or after this subsection came into force.

(2) A former citizen who is deemed by section 75 to hold a resident visa is liable for deportation if—

(a) the person was deprived of his or her New Zealand citizenship under section 17 of the Citizenship Act 1977 on the grounds that the grant, or grant requirement, was procured by fraud, false representation, or wilful concealment of relevant information; and

(b) that fraud, false representation, or wilful concealment of relevant information occurred in the context of procuring the immigration status that enabled the person to meet a requirement, or requirements, for the grant of New Zealand citizenship.

(3) A person liable for deportation under this section may, not later than 28 days after the date of service of a deportation liability notice, appeal to the Tribunal against his or her liability for deportation—

(a) on humanitarian grounds only, if subsection (1)(a) or (2) applies:

(b) on the facts and on humanitarian grounds, if subsection (1)(b) applies.

(4) If section 156 also applies to a person to whom this section applies, the person's deportation liability must be determined under section 156 and not this section.

Section 158 heading: amended, on 7 May 2015, by section 42(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 158(1): replaced, on 7 May 2015, by section 42(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 158(1A): inserted, on 7 May 2015, by section 42(2) of the Immigration Amendment Act 2015 (2015 No 48).

159 Deportation liability of resident if visa conditions breached

(1) A resident is liable for deportation if the Minister determines that—

(a) the conditions of his or her visa have not been met; or

(b) the resident has materially breached the conditions of his or her visa.

(2) A person liable for deportation under this section may, not later than 28 days after the date of service of a deportation liability notice, appeal to the Tribunal both on the facts and on humanitarian grounds against his or her liability for deportation.

160 Deportation liability of residence class visa holder if new information as to character becomes available

(1) A residence class visa holder is liable for deportation if, not later than 5 years after the date the person first held a residence class visa,—

(a) new information becomes available that—

(i) relates to the character of the person; and

(ii) was relevant at the time the visa was granted; and

(b) the Minister determines that the person would not have been eligible for the grant of the visa under this Act or immigration instructions if that information had been available at the time the visa was granted.

(2) For the purposes of subsection (1), the new information may relate to whether the person was, or should have been, an excluded person, or to rules and criteria relating to character contained within immigration instructions.

(3) A person liable for deportation under this section may, not later than 28 days after the date of service of a deportation liability notice, appeal to the Tribunal both on the facts and on humanitarian grounds against his or her liability for deportation.

(4) For the purposes of subsection (1), the date that a person first held a residence class visa must be calculated in accordance with section 161(5).

161 Deportation liability of residence class visa holder convicted of criminal offence

(1) A residence class visa holder is liable for deportation if he or she is convicted, in New Zealand or elsewhere,—

(a) of an offence for which the court has the power to impose imprisonment for a term of 3 months or more if the offence was committed at any time—

(i) when the person was unlawfully in New Zealand; or

(ii) when the person held a temporary entry class visa; or

(iii) not later than 2 years after the person first held a residence class visa; or

(b) of an offence for which the court has the power to impose imprisonment for a term of 2 years or more, if the offence was committed not later than 5 years after the person first held a residence class visa; or

(c) of an offence and sentenced to imprisonment for a term of 5 years or more (or for an indeterminate period capable of running for 5 years or more), if the offence was committed not later than 10 years after the person first held a residence class visa; or

(d) of an offence against section 350(1)(a) or 351, if the offence was committed not later than 10 years after the person first held a residence class visa, and whether that visa was granted before or after this paragraph comes into force.

(2) A person liable for deportation under this section may, not later than 28 days after being served with a deportation liability notice, appeal to the Tribunal—

(a) on humanitarian grounds against his or her liability for deportation; and

(b) if he or she is a refugee or a protected person, against any decision of a refugee and protection officer that he or she may be deported.

(3) For the purposes of subsection (1)(a)(iii), (b), (c), and (d), the periods of 2 years, 5 years, and 10 years after a person first held a residence class visa are to be determined exclusive of any time spent by the person in imprisonment following conviction for any offence.

(4) Subsection (1)(c) applies—

(a) whether the sentence is of immediate effect or is deferred or is suspended in whole or in part:

(b) if a person has been convicted of 2 or more offences on the same occasion or in the same proceedings, and any sentences of imprisonment imposed in respect of those offences are cumulative, as if the person had been convicted of a single offence and sentenced for that offence to the total of the cumulative sentences:

(c) if a person has been convicted of 2 or more offences, and a single sentence has been imposed in respect of those offences, as if that sentence had been imposed in respect of a conviction for a single offence.

(5) For the purposes of this section and section 160(1), a person first holds a residence class visa—

(a) on the date on which the person is first granted a residence class visa of any type in New Zealand; or

(b) if the visa was granted outside of New Zealand, on the first occasion on which the person arrives in New Zealand and is granted entry permission as the holder of the residence class visa; or

(c) if the person arrives in New Zealand and is granted entry permission as the holder of a residence class visa following a continuous period of absence from New Zealand of at least 5 years, on the date the person first re-enters New Zealand after the continuous period of absence; or

(d) if the person is a person to whom a visa waiver applies and arrives in New Zealand following a continuous period of absence from New Zealand of at least 5 years, on the date the person first re-enters New Zealand (and is granted a residence class visa) after the continuous period of absence.

(6) Subsection (7) applies to a person if he or she—

(a) was exempt from the requirement to hold a permit under the former Act; but

(b) is deemed to hold a residence class visa under section 417(3) of this Act.

(7) For the purposes of this section, the person first holds a residence class visa—

(a) on the date he or she first entered New Zealand and was exempt from the requirement to hold a residence permit under the former Act; or

(b) on the date he or she first re-entered New Zealand and was exempt from the requirement to hold a residence permit under the former Act following a continuous period of absence from New Zealand of at least 5 years.

Compare: 1987 No 74 s 91(1), (4), (6)

Section 161(1)(c): amended, on 7 May 2015, by section 43(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 161(1)(d): inserted, on 7 May 2015, by section 43(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 161(3): amended, on 7 May 2015, by section 43(3) of the Immigration Amendment Act 2015 (2015 No 48).

162 Deportation liability if refugee or protection status cancelled under section 146

(1) A person who is not a New Zealand citizen and who was previously recognised as a refugee or a protected person is liable for deportation if his or her recognition is cancelled under section 146.

(2) The person may, not later than 28 days after the date of service of a deportation liability notice, appeal to the Tribunal against his or her liability for deportation—

(a) on humanitarian grounds only, if the person has been convicted of an offence where it is established that he or she acquired recognition as a refugee or a protected person by fraud, forgery, false or misleading representation, or concealment of relevant information; or

(b) on the facts and on humanitarian grounds, in any other case.

Compare: 1987 No 74 s 129L(1)(c)

163 Deportation liability of persons threatening security

(1) Where the Minister certifies that a person constitutes a threat or risk to security, the Governor-General may, by Order in Council, order the deportation from New Zealand of that person.

(2) The person named in the order is accordingly liable for deportation.

(3) The Governor-General may, by Order in Council, revoke an order made under subsection (1).

Compare: 1987 No 74 ss 72, 73

164 Limitation on deportation of persons recognised or claiming recognition as refugee or protected person

(1) No person who is recognised as a refugee or a protected person in New Zealand, or who is a claimant, may be deported under this Act.

(2) Subsection (1) applies despite anything in this Part, but subject to subsections (3) and (4).

(3) A refugee or a claimant for recognition as a refugee may be deported but only if Article 32.1 or 33 of the Refugee Convention allows the deportation of the person.

(4) A protected person may be deported to any place other than a place in respect of which there are substantial grounds for believing that the person would be in danger of being subjected to—

(a) torture (as defined in section 130(5)); or

(b) arbitrary deprivation of life or cruel treatment (as defined in section 131(6)).

(5) A refugee and protection officer must determine the matter in subsection (3) or (4), and section 148 applies when making the determination, as if the determination were a determination to which that section applies.

165 Immigration officer must have regard to certain matters when dealing with claimants, refugees, or protected persons

An immigration officer must have regard to Part 5 and Schedule 1 (being the text of the Refugee Convention) when carrying out his or her functions under this Act in relation to a claimant, a refugee, or a protected person.

166 Limitation on deportation of diplomats, etc

Despite anything in this Part, no person who is for the time being entitled to any immunity from jurisdiction by or under the Diplomatic Privileges and Immunities Act 1968 (other than a person referred to in section 10D(2)(d) of that Act) or the Consular Privileges and Immunities Act 1971 may be deported under this Act.

167 Period of deportation liability

(1) Residence class visa holders remain liable for deportation for a period of 10 years following the arising of the liability for deportation.

(2) The period of 10 years in subsection (1) must be calculated exclusive of—

(a) any time spent by the person in imprisonment following conviction for any offence:

(b) any period of time when the person's liability for deportation is suspended by the Minister under section 172 or by the Tribunal under section 212.

(3) To avoid doubt, a person liable for deportation under section 154 (being a person unlawfully in New Zealand) remains liable for deportation as long as he or she is unlawfully in New Zealand.

168 Liability for deportation when person outside New Zealand

(1) A person may become liable for deportation under any of sections 155 to 163 when the person is outside New Zealand and, subject to this section, this Part and Part 7 apply as if the person were in New Zealand.

(2) Subsection (3) applies to a person who—

(a) is outside New Zealand; and

(b) is liable for deportation; and

(c) holds a visa.

(3) The person may—

(a) appeal against his or her liability for deportation; and

(b) travel to New Zealand during the period in which the appeal can be made; and

(c) if the person does appeal, travel to New Zealand pending the determination of the appeal.

169 Effect of being liable for deportation

(1) A person liable for deportation may not—

(a) apply for a visa, if he or she is unlawfully in New Zealand; or

(b) apply for a further visa of a different class or type, if he or she currently holds a visa.

(2) However, the Minister or an immigration officer may, in his or her absolute discretion, grant a visa of a different class or type to a person to whom subsection (1)(b) applies.

(3) While a person is liable for deportation, the processing of any application by the person for a visa of a different class or type must be suspended.

(3A) However, nothing in subsection (3) prevents the processing of any application referred back to the Minister or the chief executive by the Tribunal under section 188(1)(d) or (e).

(4) While a person is liable for deportation, the processing of any application by the person for the grant of New Zealand citizenship under section 8 of the Citizenship Act 1977 or section 7(1)(b)(ii) of the Citizenship (Western Samoa) Act 1982 must be suspended.

Section 169(3A): inserted, on 7 May 2015, by section 44 of the Immigration Amendment Act 2015 (2015 No 48).

Notification of liability for deportation

170 Deportation liability notice

(1) A deportation liability notice must be served on a person liable for deportation if it is intended to execute the deportation of the person.

(2) Subsection (1) applies unless—

(a) the person is liable for deportation on the grounds of being unlawfully in New Zealand; or

(b) the person is named in a deportation order under section 163.

(3) If a deportation liability notice is served by way of personal service, it may be served only by an immigration officer or by another person on behalf of an immigration officer.

Section 170(3): replaced, on 7 May 2015, by section 45 of the Immigration Amendment Act 2015 (2015 No 48).

171 Contents of deportation liability notice

A deportation liability notice must be signed by the Minister or an immigration officer and state—

(a) the provision of this Act under which liability for deportation arose:

(b) the ground or grounds on which liability for deportation arose:

(c) if applicable, the right to give good reason, not later than 14 days after the date of service of the notice, as to why deportation should not proceed, and who that reason must be given to:

(d) whether there is a right of appeal against liability for deportation and, if so,—

(i) what it is:

(ii) how to exercise the right of appeal:

(iii) the time limit for lodging the appeal:

(e) the length or period of prohibition on entry to New Zealand that the person named in the notice may become subject to:

(f) the consequences of attempting to return to New Zealand during the prohibition:

(g) the requirement to repay any costs to the Crown of deportation:

(h) if applicable, that a refugee and protection officer has determined that deportation of the person is not prohibited under section 164:

(i) if applicable, the grounds on which liability for deportation has been reactivated under section 172(3) or 212(3).

Section 171(a): amended, on 7 May 2015, by section 46 of the Immigration Amendment Act 2015 (2015 No 48).

Cancellation or suspension of deportation liability

172 Minister may cancel or suspend liability for deportation

(1) The Minister may at any time, by written notice, cancel a person's liability for deportation.

(2) The Minister may at any time, by written notice, suspend a residence class visa holder's liability for deportation—

(a) for a period not exceeding 5 years; and

(b) subject to the visa holder complying with any conditions stated in the notice (which take effect from the date specified in the notice, being a date not earlier than the date of notification).

(2A) The Minister may exercise his or her powers under this section whether or not the person who is liable for deportation—

(a) has given good reason under section 155(2), 156(2)(b), or 157(2) why the person should not be deported; or

(b) has purported to apply to the Minister for any other reason.

(3) Where a person fails to comply with the conditions stated in a notice under subsection (2),—

(a) the Minister may reactivate the person's liability for deportation by causing a deportation liability notice to be served on the person that sets out the grounds of the reactivation; and

(b) subject to section 175A(4), the person has 28 days from the date the deportation liability notice is served to leave New Zealand.

(4) In the case of a person who has appealed against his or her liability for deportation, the Minister must notify the Tribunal if the person's liability for deportation is cancelled, suspended, or reactivated under subsection (1), (2), or (3)(a).

(5) The decision to cancel or suspend a person's liability for deportation is in the absolute discretion of the Minister.

(6) In the case of a person in imprisonment, the period referred to in subsection (2) commences on the date of the person's release.

(7) The cancellation or suspension of a person's liability for deportation does not prevent the person from becoming liable for deportation on other grounds.

Section 172(2A): inserted, on 7 May 2015, by section 47(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 172(3)(b): amended, on 7 May 2015, by section 47(2) of the Immigration Amendment Act 2015 (2015 No 48).

173 Right of victims to make submissions on suspension or cancellation of liability for deportation

(1) In determining whether to cancel or suspend a person's liability for deportation, the Minister must have regard to any written submissions made by a victim of an offence or offences of which the person who is liable for deportation has been convicted and from which his or her liability for deportation arises.

(2) The Minister must, on a request for the purpose, make available to a lawyer or agent (if any) who is acting for the person who is liable for deportation a copy of all written submissions made by the victim.

(3) The Minister, or a lawyer or agent acting for the person, must, on a request for the purpose, show the person a copy of all written submissions made by the victim. However, the person may not keep a copy of any of those submissions.

(4) Despite subsections (2) and (3), the Minister may withhold from the person and every lawyer or agent (if any) acting for the person any part of the victim's written submissions if, in the Minister's opinion, the withholding of that part is necessary to protect the physical safety or security of the victim concerned.

(5) Despite subsection (1), the Minister must not have regard to any part of the victim's submissions that is withheld under subsection (4).

(6) In this section, **victim** means a victim of an offence of a kind referred to in section 29 of the Victims' Rights Act 2002.

Compare: 1987 No 74 s 93A

174 Effect of suspension

(1) Where a person's liability for deportation is suspended by the Minister under section 172, during the period of the suspension—

(a) the person may not apply for a visa of a different class or type; and

(b) the processing of any application made by the person for a visa of a different class or type must be suspended; and

(c) subject to sections 9 and 10 of the Citizenship Act 1977 and section 7(1)(b)(i) of the Citizenship (Western Samoa) Act 1982, the person may not be granted citizenship on the basis of meeting a requirement (or requirements) for the grant of New Zealand citizenship that requires the person to hold a residence class visa.

(2) If the Minister determines that a person has met the conditions stated by the Minister under section 172(2) for the period of the suspension, the Minister must—

(a) cancel the person's liability for deportation; and

(b) notify the person and the Tribunal of that fact.

Deportation

175 Service of deportation order

(1) A deportation order may be served on a person who is liable for deportation on or after the date or time specified in section 175A.

(2) However, a deportation order may be served on an earlier date, if requested by the person liable for deportation.

(3) A deportation order may only be served by an immigration officer (or by another person on behalf of an immigration officer) or a constable.

(4) A deportation order may only be served on a person outside New Zealand if the person still holds a visa.

Section 175: replaced, on 7 May 2015, by section 48 of the Immigration Amendment Act 2015 (2015 No 48).

175A Time when deportation order may be served

(1) Where a person has a right to give good reason why deportation should not proceed, the first day on which a deportation order may be served on the person is,—

(a) if the person does not provide submissions as to good reason why deportation should not proceed, the day that is 15 days after the date of service of a deportation liability notice on the person; or

(b) if the person provides submissions as to good reason why deportation should not proceed, and the person to whom the submissions are provided determines that deportation should continue, the day after the person is notified of that determination.

(2) Where a person has a right to appeal under this Act against liability for deportation, the first day on which a deportation order may be served on the person is—

(a) the day after the expiry of the period for lodging an appeal, if the person has not lodged an appeal:

(b) where the person has lodged an appeal to the Tribunal,—

(i) if the appeal is withdrawn, the day after the withdrawal:

(ii) if the liability for deportation is upheld, the day that is 28 days after the Tribunal determines the appeal (but subject to paragraph (c)):

(c) where the person has applied under section 245 for leave to appeal to the High Court,—

(i) if the application for leave is withdrawn, the day after the withdrawal:

(ii) if the High Court refuses leave to appeal, on the day after the expiry of the period for lodging an application for leave to the Court of Appeal in accordance with the rules of the Court of Appeal (but subject to subparagraph (iii)):

(iii) if the person applies to the Court of Appeal for leave and leave is refused, the day after the person is notified of the Court of Appeal's refusal:

(iv) if the application for leave is granted but the appeal is withdrawn, the day after the withdrawal:

(v) if the application for leave is granted and the person's liability for deportation is upheld, the day after the person is notified of the determination of the appeal.

(3) Where a person has both a right to give good reason why deportation should not proceed and a right to appeal under this Act against liability for deportation, the first day on which a deportation order may be served on the person is the later of—

(a) the first day on which the deportation order may be served under subsection (1); and

(b) the first day on which a deportation order may be served under subsection (2).

(4) Where a person has breached the conditions stated in a notice or order suspending his or her liability for deportation under section 172(2) or 212(1), the first day on which a deportation order may be served on the person is the later of—

(a) the day that is 28 days after service of a deportation liability notice on the person under section 172(3) or 212(3)(a), as the case may be; and

(b) any applicable day determined under subsection (2).

(5) A deportation order may be served immediately on a person in the following circumstances:

(a) where the person has been served with a deportation liability notice and the person does not have—

(i) a right to give good reason why deportation should not proceed; or

(ii) a right of appeal against liability for deportation:

(b) where an Order in Council under section 163 has been made in respect of the person:

(c) where the person—

(i) was unlawfully in New Zealand before 2 am on 29 November 2010; and

(ii) continues to be unlawfully in New Zealand under this Act; and

(iii) has no right of appeal under this Act against liability for deportation:

(d) where the person was the holder of a limited visa that has expired (unless that person has been served with a deportation liability notice under paragraph (a), in which case paragraph (a) applies).

(6) In this section, a **right to give good reason why deportation should not proceed** means a right, stated in a deportation liability notice served on a person liable for deportation, to give good reason, not later than 14 days after the date of service of that notice, as to why deportation should not proceed.

Section 175A: inserted, on 7 May 2015, by section 48 of the Immigration Amendment Act 2015 (2015 No 48).

176 Content of deportation order

(1) A deportation order must specify—

(a) that the person named in the order is ordered to be deported from New Zealand; and

(b) that any visa held by the person has been, or will be, cancelled in accordance with section 64(1)(ab); and

(c) the provision of this Act under which the person became liable for deportation; and

(d) the ground or grounds for deportation; and

(e) the period of any prohibition on entry to New Zealand that the person named in the order is subject to; and

(f) the consequences of attempting to return to New Zealand during the period of prohibition; and

(g) that the person is required to repay the actual or (if an estimate of costs is specified in the deportation order) the estimated costs of deportation.

(2) A deportation order must be signed by—

(a) the Governor-General, if the order is made under section 163; or

(b) an immigration officer, in any other case.

Section 176(1)(b): replaced, on 7 May 2015, by section 49(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 176(1)(g): replaced, on 7 May 2015, by section 49(2) of the Immigration Amendment Act 2015 (2015 No 48).

177 Deportation order may be cancelled

(1) An immigration officer may, in his or her absolute discretion, cancel a deportation order served on a person to whom section 154 applies.

(2) Nothing in subsection (1) gives a person a right to apply for the cancellation of a deportation order. However, an immigration officer must consider cancelling the deportation order of a person who is in New Zealand if the person provides information to the officer concerning his or her personal circumstances, and the information is relevant to New Zealand's international obligations.

(3) If an immigration officer does consider cancelling a deportation order, whether by way of a purported application or his or her own motion, the officer must have regard to any relevant international obligations, but otherwise—

(a) may make a decision as he or she thinks fit; and

(b) in doing so, is not under any obligation, whether by implication or otherwise,—

(i) to apply any test or any particular test and, in particular, the officer is not obliged to apply the test set out in section 207; or

(ii) to inquire into the circumstances of, or to make any further inquiry in respect of the information provided by or in respect of, the person who is the subject of the deportation order or any other person.

(4) Whether or not an immigration officer considers cancelling a deportation order,—

(a) he or she is not obliged to give reasons for any decision, other than the reason that this subsection applies; and

(ab) privacy principle 6 (which relates to access to personal information and is set out in section 6 of the Privacy Act 1993) does not apply to any reasons for any decision relating to the purported application; and

(b) section 23 of the Official Information Act 1982 does not apply in respect of the decision.

(5) However, to the extent that an immigration officer does have regard to any international obligations, the officer is obliged to record—

(a) a description of the international obligations; and

(b) the facts about the person's personal circumstances.

Section 177(4)(ab): inserted, on 7 May 2015, by section 50 of the Immigration Amendment Act 2015 (2015 No 48).

178 Executing deportation order

(1) A deportation order may be executed once it has been served on the person subject to the order.

(2) A deportation order may be executed by—

(a) taking the person into custody; and

(b) escorting the person (or arranging for the person to be escorted) to an airport or port; and

(c) ensuring that the person is placed on board a craft and detained there until the person leaves New Zealand.

(3) A deportation order may be executed in respect of a person who is serving a sentence of imprisonment in a prison only if the Minister has ordered the release of the person in accordance with section 55 of the Parole Act 2002.

179 Deported person may not enter New Zealand during period of prohibition on entry

(1) A person 18 years of age or over who is deported from New Zealand may not return to New Zealand, or be granted a visa or entry permission, during the period of prohibition on entry that applies to the person as set out in the following table:

Why person deported	Period of prohibition on entry (calculated from the date of deportation)
Section 155 applies (granted a visa as the result of an administrative error and visa not cancelled)	none
Section 154 applies (unlawfully in New Zealand), and person is subject to deportation order and deported not more than 12 months after date on which person became unlawfully in New Zealand	2 years
Section 154 applies (unlawfully in New Zealand), and person is subject to deportation order and deported 12 months or more after date on which person became unlawfully in New Zealand	5 years
Section 154 applies (unlawfully in New Zealand), and person is subject to deportation order, and it is second or subsequent time that person has been unlawfully in New Zealand	5 years
Section 157 applies (sufficient reasons for temporary entry class visa holder to be deported)	5 years
Section 159 applies (breached resident visa conditions)	5 years
Section 156 applies (visa granted on basis of false identity)	permanent prohibition
Section 158 applies (fraud, forgery, etc, in relation to an application)	permanent prohibition
Section 160 applies (new information as to character becomes available)	permanent prohibition
Section 162 applies (refugee or protection status cancelled for fraud, forgery, etc)	permanent prohibition
Section 161 applies (residence class visa holder convicted of specified offence)	permanent prohibition
Section 163 applies (certified as person constituting threat or risk to security)	permanent prohibition

(2) A person who is liable for deportation is not subject to any period of prohibition on entry if the person—

(a) is liable for deportation only on the grounds that the person is unlawfully in New Zealand; and

(b) leaves New Zealand voluntarily before he or she is served with a deportation order.

(3) For the purposes of subsection (1), the relevant provision for determining why the person was deported is—

(a) the provision under which the person became liable for deportation, as stated in the last deportation order served on the person; or

(b) if no deportation order was served on the person, the provision under which liability for deportation arose, as stated in the last deportation liability notice served on the person.

Section 179(1) table: amended, on 7 May 2015, by section 51(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 179(2): replaced, on 7 May 2015, by section 51(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 179(3): inserted, on 7 May 2015, by section 51(2) of the Immigration Amendment Act 2015 (2015 No 48).

180 Deported person may not enter New Zealand until costs of deportation repaid

(1) A person 18 years of age or over who is deported from New Zealand may not return to New Zealand, or be granted a visa or entry permission, until the person has repaid any debt due to the Crown in respect of the costs of his or her deportation.

(2) The requirement of this section is in addition to the period of prohibition on entry under section 179.

(3) The Minister may reduce or waive any debt due by a person under subsection (1) in his or her absolute discretion.

181 Consequences for deported person if person enters or attempts to enter New Zealand during period of prohibition on entry

(1) Subsection (2) applies to a person who—

(a) is deported from New Zealand; and

(b) on deportation, is subject to a period of prohibition on entry to New Zealand under section 179 or 180(1); and

(c) attempts to enter or enters New Zealand during the period of prohibition in one of the following ways:

(i) by boarding a craft, or attempting to board a craft, that is travelling to New Zealand:

(ii) by arriving in New Zealand:

(iii) by entering New Zealand.

(2) The period of prohibition on entry to which the person is subject under section 179 restarts as from the later of the following dates:

(a) the date the person attempts to re-enter, if the attempted entry is unsuccessful:

(b) the date the person is once again deported from New Zealand, if the attempted re-entry is successful.

(3) If, despite a prohibition on entry applying to a person, a person re-enters New Zealand and the person becomes subject to a further prohibition on entry, the period of prohibition on entry that applies to the person on the subsequent deportation is the longest prohibition applicable under the table set out in section 179.

182 Minister may reduce or remove period of prohibition on entry

(1) The Minister may in his or her absolute discretion reduce, or remove altogether, the period of prohibition on entry that would otherwise apply to a person under section 179(1).

(2) A reduction or removal under subsection (1) remains subject to section 180(1), unless the Minister determines otherwise.

Part 7
Appeals, reviews, and other proceedings

183 Interpretation

In this Part, unless the context otherwise requires,—

affected person means a person who is—

(a) the subject of an application made by a refugee and protection officer under section 144 or 147 to the Tribunal in relation to the cessation or cancellation of recognition of the person as a refugee or a protected person; or

(b) the subject of an application made by the Minister under section 212(2) to the Tribunal on whether the person has breached the conditions of suspension of his or her liability for deportation

closed hearing, in relation to proceedings in the Tribunal or a court, means proceedings conducted in the absence of all persons other than—

(a) the Judge or Judges hearing the case:

(b) the chief executive of the relevant agency, or his or her security-cleared representative, or both:

(c) the Minister, or his or her security-cleared representative, or both:

(d) if applicable, a refugee and protection officer, or his or her security-cleared representative, or both:

(e) any special advocate:

(f) any person appointed as counsel assisting the court or as a special adviser by the Tribunal or the court:

(g) any person authorised by the Tribunal or the court to provide administrative assistance in the proceedings and who has an appropriate security clearance

matter means—

(a) an application made by a refugee and protection officer under section 144 or 147 to the Tribunal in relation to the cessation or cancellation of recognition of a person as a refugee or a protected person:

(b) an application made by the Minister under section 212(2) to the Tribunal on whether a person has breached the conditions of suspension of his or her liability for deportation.

184 Purpose of Part

The purpose of this Part is—

(a) to provide comprehensively for the system of appeal and review in respect of decision making under this Act, including by providing for—

(i) reconsideration of certain temporary visa applications; and

(ii) appeals in respect of decisions on residence class visas; and

(iii) appeals in respect of decisions concerning recognition of a person as a refugee or a protected person; and

(iv) appeals against liability for deportation; and

(b) to establish the Immigration and Protection Tribunal, a specialist tribunal to determine appeals and other matters under this Act; and

(c) to provide for appeals from the decisions of the Tribunal, and deal with judicial reviews of decisions made under this Act.

Limited right of reconsideration concerning temporary entry class visas

185 Right of reconsideration if onshore application for further temporary visa declined

(1) This section applies to a holder of a temporary visa if—

(a) the holder of the temporary visa (the **applicant**) is onshore and applies during the currency of that visa for a further temporary visa; and

(b) the application for the further temporary visa is declined; and

(c) the Minister did not make the decision to decline the application.

(2) The applicant may apply in the prescribed manner for a reconsideration of the decision to decline a further visa if, and only if,—

(a) the application for reconsideration is made not later than 14 days after the date on which the applicant received notice of the decision to decline the further visa; and

(b) the applicant is still lawfully in New Zealand at the time of the application for reconsideration.

(3) The decision to decline the visa application must be reconsidered by another immigration officer of equal grade or senior to the one who made the decision, or by the Minister.

(4) If the decision to decline the visa application is confirmed and no visa is granted following reconsideration under this section, an immigration officer must inform the applicant, in writing, of—

(a) the decision; and

(b) in the case of an applicant who still holds a visa, the date on which the person will have an obligation to leave New Zealand; and

(c) in the case of an applicant who no longer holds a visa,—

(i) the fact that the person is already obliged to leave New Zealand; and

(ii) the fact that the person may appeal on humanitarian grounds against his or her liability for deportation not later than 42 days after the date on which the person received confirmation of the decision to decline the visa application.

(5) The result of any reconsideration under this section of a decision to decline an application for a further temporary visa is final and conclusive, and no further application for reconsideration of that decision may be made.

(6) The fact that an application for reconsideration has been made under this section does not of itself entitle the applicant to remain in New Zealand after the expiry of the applicant's current temporary visa, but, until the application for reconsideration has been determined or withdrawn, the person may not be deported.

Compare: 1987 No 74 s 31

Limited right of review in respect of temporary entry class visa decisions

186 Limited right of review in respect of temporary entry class visa decisions

(1) No appeal lies against a decision of the Minister or an immigration officer on any matter in relation to a temporary entry class visa, whether to any court, the Tribunal, the Minister, or otherwise.

(2) Subsection (1) applies except to the extent that section 185 provides a right of reconsideration for an onshore holder of a temporary visa in the circumstances set out in that section.

(3) A person may bring review proceedings in a court in respect of a decision in relation to a temporary entry class visa except if the decision is in relation to the—

(a) refusal or failure to grant a temporary entry class visa to a person outside New Zealand:

(b) cancellation of a temporary entry class visa before the holder of the visa arrives in New Zealand.

Appeals in relation to residence class visas

187 Rights of appeal in relation to decisions concerning residence class visas

(1) There is a right of appeal to the Tribunal against a decision concerning a residence class visa in the following circumstances:

(a) an applicant for a residence class visa may appeal against—

(i) a decision of an immigration officer to decline to grant the visa (including in the circumstances described in section 190(2)(b)):

(ii) a decision by the Minister not to grant a residence class visa if classified information has been relied on in making the decision:

(b) a person outside New Zealand who has been granted a resident visa may appeal against a decision to cancel the visa under section 65(1):

(c) a person who has been granted a resident visa may appeal against a decision to refuse to grant the person entry permission (including in the circumstances described in section 190(2)(b)).

(2) However, no appeal lies under this Act in respect of—

(a) a decision by the Minister not to grant a residence class visa (except in the circumstances described in subsection (1)(a)(ii)); or

(b) a refusal of the Minister or an immigration officer to grant a residence class visa or entry permission to an excluded person; or

(c) a refusal or failure of the Minister or an immigration officer to issue an invitation to apply for a visa; or

(d) a refusal of the Minister or an immigration officer to grant a residence class visa to a person who has been invited to apply for a visa, if a ground for the refusal is that the Minister or officer determines that the person,—

(i) whether personally or through an agent, in expressing his or her interest in obtaining an invitation to apply for a visa, submitted false or misleading information or withheld relevant information that was potentially prejudicial to the person; or

(ii) did not ensure that an immigration officer was informed of any material change in circumstances between the time of expressing interest and the time of the person's application for the relevant visa; or

(e) a lapse of an application for a residence class visa or of an expression of interest in obtaining an invitation to apply for a visa; or

(f) a revocation of an invitation to apply for a visa.

(3) Where a person to whom subsection (1)(b) or (c) applies appeals under this section, this Act applies as if the decision were a decision to decline an application for a residence class visa.

(4) The grounds for an appeal under this section are that—

(a) the relevant decision was not correct in terms of the residence instructions applicable at the time the relevant application for the visa was made; or

(b) the special circumstances of the appellant are such that consideration of an exception to those residence instructions should be recommended.

(5) An appeal under this section must be brought not later than 42 days after the date the appellant is notified of the decision appealed against.

(6) *[Repealed]*

(7) *[Repealed]*

(8) A person may bring review proceedings in a court in respect of a decision in relation to a residence class visa except if the decision is in relation to—

(a) the refusal or failure to grant a residence class visa to a person outside New Zealand; or

(b) the cancellation of a resident visa granted outside New Zealand before the holder of the visa first arrives in New Zealand as the holder of the visa.

Compare: 1987 No 74 s 18C(1)–(3)

Section 187(6): repealed, on 7 May 2015, by section 52 of the Immigration Amendment Act 2015 (2015 No 48).

Section 187(7): repealed, on 7 May 2015, by section 52 of the Immigration Amendment Act 2015 (2015 No 48).

188 Determination of appeal in relation to residence class visa

(1) In determining an appeal under section 187, the Tribunal may—

(a) confirm the decision appealed against as having been correct in terms of the residence instructions applicable at the time the application for the visa was made by the appellant; or

(b) reverse the decision as having been incorrect in terms of the residence instructions applicable at the time the application for the visa was made by the appellant; or

(c) note the correctness of the original decision in terms of the residence instructions applicable at the time the visa application was made on the basis of the information provided to the Minister or the immigration officer before the time of the decision, but reverse that decision on the basis of any information properly made available to the Tribunal that reveals that the grant of the visa would have been correct in terms of the applicable residence instructions; or

(d) note the correctness of the original decision in terms of the residence instructions applicable at the time the visa application was made on the basis of the information provided to the Minister or the immigration officer before the time of the decision, but determine the appeal by cancelling the decision and referring the matter back to the Minister, if he or she made the decision, or the chief executive, in any other case, for consideration under those residence instructions as if a new visa application had been made that included any additional information properly provided to the Tribunal; or

(e) determine the appeal by cancelling the decision and referring the application back to the Minister, if he or she made the decision, or the chief executive, in any other case, for correct assessment in terms of the applicable residence instructions, where the Tribunal—

(i) considers that the decision appealed against was made on the basis of an incorrect assessment in terms of the residence instructions applicable at the time the application was made; but

(ii) is not satisfied that the appellant would, but for that incorrect assessment, have been entitled in terms of those instructions to the visa or entry permission; or

(f) confirm the decision as having been correct in terms of the residence instructions applicable at the time the visa application was made, but recommend that the special circumstances of the applicant are such as to warrant consideration by the Minister as an exception to those instructions.

(2) Where the Tribunal determines to reverse a decision to refuse a visa under subsection (1)(b) or (c), the Tribunal must—

(a) consider whether it is appropriate that conditions should be imposed in accordance with section 50 when a resident visa is granted to the appellant; and

(b) if it considers that imposing conditions is appropriate, direct the Minister to impose under that section the conditions specified in its decision (which may be specified with the degree of generality or particularity that the Tribunal thinks fit); and

(c) notify the appellant in writing of any conditions imposed.

(3) Where the Tribunal refers an application back to the Minister or the chief executive under subsection (1)(e), the Tribunal may give him or her the directions it thinks fit as to how a correct assessment of the application should be carried out.

(4) The Tribunal must, as soon as practicable, notify the appellant in writing of its decision on the appeal and the reasons for that decision.

(5) Subject to section 245, the decision of the Tribunal on the appeal is final, and, except where a court otherwise directs, the Tribunal has no jurisdiction to reconsider the appeal after the appellant has been notified of the decision.

Compare: 1987 No 74 s 18D

189 Use of further information in appeals under section 187

(1) In determining an appeal under section 187, the Tribunal may not consider any information or evidence adduced by the appellant that was not provided to the Minister or the immigration officer before the time at which the Minister or the officer made the decision that is the subject of the appeal.

(2) Subsection (1) is subject to subsections (3) to (6).

(3) The Tribunal may consider information or evidence not provided by the appellant to the Minister or the immigration officer before the time of the relevant decision if—

(a) the Tribunal is satisfied that—

(i) the information or evidence existed at the time the decision to refuse the visa was made, and would have been relevant to the making of that decision; and

(ii) the appellant could not, by the exercise of reasonable diligence, have placed that information or evidence before the Minister or the immigration officer at the time at which the Minister or the officer made the decision on the application; and

(iii) in all the circumstances it is fair to consider the information or evidence; or

(b) the Tribunal considers that it is necessary for it to have the information or evidence for the purpose of considering whether to make a determination under section 188(1)(f).

(4) The Tribunal may require the chief executive to arrange for an interview to be conducted with any specified person for any specified purpose and in any specified manner, and for the report of that interview to be provided to the Tribunal, where—

(a) the Tribunal considers that the decision under appeal depended, in whole or in part, upon the recorded results of an interview conducted with the appellant or with some other person connected with the application; and

(b) those results involved the recording of an exercise of judgment on the part of the interviewing officer as opposed to the recording of facts; and

(c) the Tribunal considers that further written evidence or submissions will not assist to confirm or test those results.

(5) An interview conducted under subsection (4) may not be conducted by any immigration officer who has previously interviewed the person.

(6) The Tribunal may, if it considers it fair in all the circumstances to do so, determine the appeal in the manner set out in section 188(1)(d) where—

(a) it comes to the attention of the Tribunal that any particular event has occurred after the time at which the Minister or the immigration officer made the decision on the appellant's visa application; and

(b) the Tribunal is satisfied that the event materially affects the applicant's eligibility under residence instructions.

Compare: 1987 No 74 s 18F(4)–(6)

190 Procedure where appeal successful or Tribunal makes recommendation

(1) The Minister or an immigration officer must grant a residence class visa (and if necessary grant entry permission) to the appellant where the Tribunal reverses a decision under section 188(1)(b) or (c).

(2) However, nothing in subsection (1) requires a residence class visa or entry permission to be granted to a person—

(a) until the normal requirements for providing any certificate or other material that is required before a visa or entry permission can be granted have been complied with, where the certificate or other material—

(i) was not supplied to the Minister or the immigration officer concerned before the date on which the decision appealed against was made; or

(ii) by reason of the passing of time, is no longer current for the purposes of granting a visa or entry permission under this Act; or

(b) where, since the date of the decision that is the subject of the appeal, any matter has arisen or any information has become available in respect of the person that would disqualify that person from being granted a residence class visa or entry permission in terms of both—

(i) the residence instructions applicable at the time of the relevant visa application; and

(ii) the residence instructions currently applicable.

(3) Where, in reliance on subsection (2)(a), a residence class visa is not immediately granted to a person who is already in New Zealand, the Minister or an immigration officer must grant a temporary visa to the person, being a visa that is current for a period of not less than 6 months.

(4) The Minister must not impose any conditions on a resident visa granted under subsection (1), unless the Tribunal has directed the Minister to do so under section 188(2)(b).

(5) Where the Tribunal makes a recommendation under section 188(1)(f), the Minister—

(a) must consider whether a residence class visa should be granted to the appellant as an exception to residence instructions; and

(b) may, if he or she grants a resident visa, impose conditions on the visa in accordance with section 50.

(6) The Minister is not obliged to give reasons in relation to any decision made as a result of any consideration under subsection (5), and neither section 27 of this Act nor section 23 of the Official Information Act 1982 applies in respect of any such decision.

Compare: 1987 No 74 s 18E

No appeal or review rights in relation to invitations to apply and transit visas

191 No appeal or review rights in relation to invitations to apply

(1) No appeal lies against a decision of the Minister or an immigration officer on any matter in relation to whether to issue an invitation to apply for a visa, whether to a court, the Tribunal, the Minister, or otherwise.

(2) No review proceedings may be brought in any court in respect of any refusal or failure of the Minister or an immigration officer to issue an invitation to apply for a visa or to revoke an invitation if an invitation is issued.

192 No appeal or review rights in relation to transit visas

(1) No appeal lies against a decision of the Minister or an immigration officer on any matter in relation to a transit visa, whether to a court, the Tribunal, the Minister, or otherwise.

(2) No review proceedings may be brought in any court in respect of any decision to refuse to grant or to cancel a transit visa.

Appeals against decisions relating to refugee or protection status

193 Tribunal consideration of refugee and protection matters

(1) Every appeal relating to whether a person should be recognised as a refugee or a protected person in New Zealand must be determined in accordance with this Act.

(2) Every appeal as to whether a person should continue to be recognised as a refugee or a protected person in New Zealand must be determined in accordance with this Act.

(3) To the extent that an issue is not dealt with in this Act, the Tribunal, in carrying out its functions in relation to the recognition of a person as a refugee, must act in a way that is consistent with New Zealand's obligations under the Refugee Convention.

(4) The Tribunal, in carrying out its functions in relation to the recognition of a person as a protected person, must act in a way that is consistent with this Act.

194 Right of appeal in relation to decisions concerning refugee or protection status (other than subsequent claims)

(1) A person may appeal to the Tribunal against a decision by a refugee and protection officer—

(a) to decline to accept for consideration the person's claim to be recognised as a refugee or a protected person on the grounds that—

(i) in light of an international arrangement or agreement (as defined in section 134(5)), the person may have lodged, or had the opportunity to lodge, a claim for refugee status in another country:

(ii) in light of an international arrangement or agreement (as defined in section 134(5)), the person may have lodged, or had the opportunity to lodge, a claim for protection in another country:

(b) under section 134(3) to decline to accept for consideration the person's claim to be recognised as a refugee:

(c) to decline the person's claim to be recognised under any of sections 129, 130, and 131 as a refugee or a protected person (whether or not the refugee and protection officer recognised the person as a refugee or a protected person under the grounds set out in another of those sections, or both of those other sections):

(d) to cease to recognise the person as a refugee or a protected person under section 143:

(e) to cancel recognition of a New Zealand citizen as a refugee or a protected person under section 145.

(2) An appeal under this section must be brought,—

(a) if the person is in detention under Part 9, not later than 5 working days after the date on which the appellant is notified of the decision to which the appeal relates; or

(b) in any other case, not later than 10 working days after the date on which the appellant is notified of the decision to which the appeal relates.

(3) The Tribunal may, however, extend the time for lodging an appeal if satisfied that special circumstances warrant an extension.

(4) To avoid doubt, an appeal right arises under subsection (1)(c) if a person's claim is declined on the grounds that the person has the protection of another country or has been recognised as a refugee by another country and can be re-

ceived back and protected there without risk of being returned to a country where he or she would be at risk of circumstances that would give rise to grounds for his or her recognition as a refugee or a protected person in New Zealand.

(5) Subsection (6) applies to a person who is entitled to an appeal under subsection (1)(a), (b), or (c) and who either—

(a) is liable for deportation and is entitled to a humanitarian appeal in respect of that liability; or

(b) would be entitled to a humanitarian appeal in respect of his or her liability for deportation, if he or she became liable for deportation.

(6) The person must lodge a humanitarian appeal at the same time as lodging an appeal under this section (and, in respect of a person to whom subsection (5)(b) applies, the humanitarian appeal must be conducted as if he or she were a person liable for deportation). If the person is—

(a) successful on the appeal under this section, the Tribunal must dispense with its consideration of the person's humanitarian appeal:

(b) unsuccessful on the appeal under this section, the Tribunal must consider the person's humanitarian appeal.

(6A) If the Tribunal dispenses (under subsection (6)(a)) with the consideration of a person's humanitarian appeal lodged at the same time as an appeal under subsection (1)(a) or (b), the person may subsequently lodge a humanitarian appeal only if it is lodged, as required by subsection (6), at the same time as an appeal under subsection (1)(c).

(7) If the person does not lodge a humanitarian appeal in accordance with subsection (6), the person is not entitled to a humanitarian appeal against his or her liability for deportation, whether the liability currently exists or may arise in the future.

(8) To avoid doubt, nothing in subsection (7) applies to a person who—

(a) complies with subsection (6); and

(b) is successful on the appeal under this section; and

(c) becomes liable for deportation for any reason at some future date.

(9) In subsection (2), **working day** means a day of the week other than—

(a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and

(ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and

(b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and

(c) if 1 January falls on a Friday, the following Monday; and

(d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday.

Compare: 1987 No 74 s 129O

Section 194(1)(e): amended, on 7 May 2015, by section 53(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 194(6)(a): amended, on 7 May 2015, by section 53(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 194(6A): inserted, on 7 May 2015, by section 53(3) of the Immigration Amendment Act 2015 (2015 No 48).

Section 194(9)(ab): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

195 Right of appeal in relation to subsequent claims for refugee or protection status

(1) A person may appeal to the Tribunal against a decision by a refugee and protection officer—

(a) under section 140(1) to refuse to consider a subsequent claim by the person to be recognised as a refugee or a protected person:

(b) under section 140(3) to refuse to consider a subsequent claim by the person to be recognised as a refugee or a protected person, but only if the person's most recent previous claim was declined under Part 6A of the former Act.

(2) A person may appeal to the Tribunal against a decision by a refugee and protection officer to decline a subsequent claim by the person to be recognised under any of sections 129, 130, and 131 as a refugee or a protected person (whether or not the refugee and protection officer recognised the person as a refugee or a protected person under the grounds set out in another of those sections, or both of those other sections).

(3) An appeal under this section must be brought,—

(a) if the person is in detention under Part 9, not later than 5 working days after the date on which the appellant is notified of the decision to which the appeal relates; or

(b) in any other case, not later than 10 working days after the date on which the appellant was notified of the decision to which the appeal relates.

(4) The Tribunal may, however, extend the time for lodging an appeal in any particular case if satisfied that special circumstances warrant an extension.

(5) To avoid doubt, an appeal right arises under subsection (2) if a person's claim is declined on the grounds that the person has the protection of another country or has been recognised as a refugee by another country and can be received back and protected there without risk of being returned to a country where he or she would be at risk of circumstances that would give rise to grounds for his or her recognition as a refugee or a protected person in New Zealand.

(6) Subsection (7) applies to a person who is entitled to appeal under this section and who either—

(a) is liable for deportation and is entitled to a humanitarian appeal in respect of that liability; or

(b) would be entitled to a humanitarian appeal in respect of his or her liability for deportation, if he or she became liable for deportation.

(7) The person must lodge a humanitarian appeal at the same time as lodging an appeal under this section (and, in respect of a person to whom subsection (6)(b) applies, the humanitarian appeal must be conducted as if he or she were a person liable for deportation). If the person is—

(a) successful on the appeal under this section, and the Tribunal goes on to consider the claim and grants the person recognition, it must dispense with its consideration of the person's humanitarian appeal:

(b) successful on the appeal under this section, and the Tribunal goes on to consider the claim but declines the claim, it must consider the person's humanitarian appeal:

(c) unsuccessful on the appeal under this section, the Tribunal must consider the person's humanitarian appeal.

(8) If the person does not lodge a humanitarian appeal in accordance with subsection (7), the person is not entitled to a humanitarian appeal against his or her liability for deportation, whether the liability currently exists or may arise in the future.

(9) To avoid doubt, nothing in subsection (8) applies to a person who—

(a) complies with subsection (7); and

(b) is successful on the appeal under this section; and

(c) becomes liable for deportation for any reason at some future date.

(10) In subsection (3), **working day** has the meaning given to it in section 194(9).

Section 195(1)(a): amended, on 19 June 2013, by section 17 of the Immigration Amendment Act 2013 (2013 No 39).

196 Determination of appeal against decision declining to accept for consideration claim in light of international arrangement or agreement

(1) Where an appeal is brought under section 194(1)(a), the Tribunal must—

(a) determine the matter de novo; and

(b) determine whether, in light of any international arrangement or agreement (as defined in section 134(5)) the claimant may have lodged, or had the opportunity to lodge,—

(i) a claim for refugee status in another country:

(ii) a claim for protection in another country.

(2) The Tribunal may dismiss or allow the appeal.

(3) If the Tribunal allows the appeal,—

(a) it must refer the claim back to a refugee and protection officer for consideration; and

(b) if the appeal relates to a person to whom section 194(5) applies, it must dispense with its consideration of any humanitarian appeal lodged by the person in accordance with section 194(6)(a).

(4) To avoid doubt, nothing in subsection (1) requires the Tribunal to seek any information, evidence, or submissions further to those provided by the appellant.

Section 196(2): amended, on 7 May 2015, by section 54(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 196(3): amended, on 7 May 2015, by section 54(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 196(3)(b): amended, on 7 May 2015, by section 54(3) of the Immigration Amendment Act 2015 (2015 No 48).

197 Determination of appeal against decision declining to accept for consideration certain claims for recognition as refugee

(1) Where an appeal is brought under section 194(1)(b), the Tribunal must—

(a) determine the matter de novo; and

(b) determine whether 1 or more of the circumstances relating to the claim were brought about by the claimant—

(i) acting otherwise than in good faith; and

(ii) for a purpose of creating grounds for recognition under section 129.

(2) For the purposes of determining the matter in subsection (1), the Tribunal must not treat the actions of any other person in relation to the claim or the claimant as a mitigating factor.

(3) The Tribunal may dismiss or allow the appeal.

(4) If the Tribunal allows the appeal,—

(a) it must refer the claim back to a refugee and protection officer for consideration; and

(b) if the appeal relates to a person to whom section 194(5) applies, it must, in accordance with section 194(6)(a), dispense with its consideration of any humanitarian appeal lodged by the person.

(5) To avoid doubt, nothing in subsection (1) requires the Tribunal to seek any information, evidence, or submissions further to those provided by the appellant.

Section 197(3): amended, on 7 May 2015, by section 55(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 197(4): amended, on 7 May 2015, by section 55(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 197(4)(b): amended, on 7 May 2015, by section 55(3) of the Immigration Amendment Act 2015 (2015 No 48).

198 Determination of appeal against declining of claim for recognition, cancellation of recognition, or cessation of recognition

(1) Where an appeal is brought under section 194(1)(c), (d), or (e), the Tribunal must—

(a) determine the matter de novo; and

(b) determine, in the following order:

(i) whether to recognise the person as a refugee on the ground set out in section 129; and

(ii) whether to recognise the person as a protected person on the ground set out in section 130; and

(iii) whether to recognise the person as a protected person on the ground set out in section 131; and

(c) in relation to the matters in paragraph (b)(ii) and (iii), determine whether there are serious reasons for considering that the claimant has—

(i) committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; or

(ii) committed a serious non-political crime outside New Zealand before coming to New Zealand; or

(iii) been guilty of acts contrary to the purposes and principles of the United Nations.

(2) However, if the appeal is brought under section 194(1)(e) and relates to a decision to cancel recognition on the grounds that section 145(b)(i) or (iii) (or both) apply, the Tribunal must—

(a) determine the matter de novo; and

(b) determine whether either or both of the following apply:

(i) recognition of the person as a refugee or a protected person may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information:

(ii) the matters dealt with in Articles 1D, 1E, and 1F of the Refugee Convention may not have been able to be properly considered by a refugee and protection officer for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information; and

(c) if it finds that either or both of the matters under paragraph (b) do apply, determine the matters described in subsection (1)(b) and (c); and

(d) if it does not find that either of the matters described in paragraph (b) applies, allow the appeal.

(3) The Tribunal may dismiss or allow the appeal, but may not refer the claim back to a refugee and protection officer for reconsideration.

(4) If the Tribunal allows an appeal in relation to a person to whom section 194(5) applies, the Tribunal must dispense with its consideration of any humanitarian appeal lodged by the person in accordance with section 194(6)(a).

(5) To avoid doubt, nothing in subsection (1) requires the Tribunal to seek any information, evidence, or submissions further to those provided by the appellant.

Section 198(1): amended, on 7 May 2015, by section 56(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 198(2): replaced, on 7 May 2015, by section 56(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 198(3): amended, on 7 May 2015, by section 56(3) of the Immigration Amendment Act 2015 (2015 No 48).

Section 198(4): amended, on 7 May 2015, by section 56(4) of the Immigration Amendment Act 2015 (2015 No 48).

Section 198 compare note: repealed, on 7 May 2015, by section 56(5) of the Immigration Amendment Act 2015 (2015 No 48).

199 After successful appeal, Minister to decide immigration status of protected person who may have committed certain crimes or been guilty of certain acts

The Minister must make any decision about a person's immigration status if the Tribunal has determined that—

(a) the person is a protected person; and

(b) there are serious reasons under section 198(1)(c) for considering that the person has committed a crime, or been guilty of any act, described in that paragraph.

200 Determination of appeal against refusal or declining of subsequent claim for recognition as refugee or protected person

(1) Where an appeal is brought under section 195(1)(a), the Tribunal must first consider—

(a) whether there has been a significant change in circumstances material to the appellant's claim since the previous claim was determined; and

(b) if so, whether the change in 1 or more of the circumstances was brought about by the appellant—

(i) acting otherwise than in good faith; and

(ii) for a purpose of creating grounds for recognition under any of sections 129 to 131.

(2) The Tribunal must dismiss the appeal if it determines that—

(a) there is no significant change in circumstances; or

(b) the change in 1 or more of the circumstances was brought about by the appellant—

(i) acting otherwise than in good faith; and

(ii) for a purpose of creating grounds for recognition under any of sections 129 to 131.

(3) The Tribunal must consider the claim for recognition in accordance with section 198(1) if it—

(a) determines that there is a significant change in circumstances; and

(b) does not determine that the change in 1 or more of the circumstances was brought about by the appellant—

(i) acting otherwise than in good faith; and

(ii) for a purpose of creating grounds for recognition under any of sections 129 to 131.

(4) Where an appeal is brought under section 195(1)(b), the Tribunal must first consider whether the subsequent claim is manifestly unfounded or clearly abusive, or repeats a previous claim.

(5) If the Tribunal determines that the subsequent claim is manifestly unfounded or clearly abusive, or repeats a previous claim, it must dismiss the appeal.

(6) If the Tribunal does not determine that the subsequent claim is manifestly unfounded or clearly abusive, or repeats a previous claim, it must consider the claim for recognition in accordance with section 198(1).

(7) Where an appeal is brought under section 195(2), the Tribunal must determine the matter in accordance with section 198(1), as if the appeal were an appeal to which that section applied.

(8) If the Tribunal reverses a decision in relation to a person to whom section 195(6) applies, the Tribunal must dispense with its consideration of any humanitarian appeal lodged in accordance with section 195(7)(a) by the person.

Section 200(1)(b)(ii): amended, on 19 June 2013, by section 17 of the Immigration Amendment Act 2013 (2013 No 39).

Section 200(2)(b)(ii): amended, on 19 June 2013, by section 17 of the Immigration Amendment Act 2013 (2013 No 39).

Section 200(3)(b)(ii): amended, on 19 June 2013, by section 17 of the Immigration Amendment Act 2013 (2013 No 39).

Appeal on facts against liability for deportation

201 Persons who may appeal to Tribunal on facts

(1) The following persons may appeal to the Tribunal on the facts against their liability for deportation:

(a) residents whose liability for deportation arises under section 155, 156(1)(b), 158(1)(b), 159, or 160:

(b) permanent residents whose liability for deportation arises under section 155, 156(1)(b), 158(1)(b), or 160:

(c) persons recognised as refugees or protected persons whose liability for deportation arises under section 162(1), other than persons described in subsection (2)(b).

(2) The following persons may not appeal to the Tribunal on the facts against their liability for deportation:

(a) residents or permanent residents whose liability for deportation arises under section 156(1)(a), 158(1)(a), 158(2), or 161:

(b) persons whose liability for deportation arises under section 162(1) and who have been convicted of an offence where it is established that the person acquired recognition as a refugee or a protected person by fraud, forgery, false or misleading representation, or concealment of relevant information:

(c) persons whose liability for deportation arises by way of a deportation order under section 163.

202 Grounds for determining appeal on facts

The Tribunal must allow an appeal against liability for deportation on the facts where,—

(a) in the case of an appellant liable for deportation under section 155, the Tribunal is satisfied, on the balance of probabilities, that the resident visa or permanent resident visa was not granted as a result of an administrative error:

(b) in the case of an appellant liable for deportation under section 156(1)(b), the Tribunal is satisfied, on the balance of probabilities, that the resident visa or permanent resident visa was not granted to the person in a false identity:

(c) in the case of an appellant liable for deportation under section 158(1)(b)(i), the Tribunal is satisfied, on the balance of probabilities, that none of the information provided in relation to the person's application, or purported application, for a residence class visa or entry permission was fraudulent, forged, false, or misleading, and no relevant information was concealed:

(ca) in the case of an appellant liable for deportation under section 158(1)(b)(ii), the Tribunal is satisfied, on the balance of probabilities, that none of the information provided in relation to the person's, or any other person's, application, or purported application, for a visa on the basis of which the residence class visa was granted was fraudulent, forged, false, or misleading, and no relevant information was concealed:

(d) in the case of an appellant liable for deportation under section 159, the Tribunal is satisfied, on the balance of probabilities, that—

(i) the conditions of the resident visa were met; or

(ii) the resident has not materially breached the conditions of his or her visa:

(e) in the case of an appellant liable for deportation under section 160, the Tribunal is satisfied, on the balance of probabilities, that—

(i) the new information was not material to the applicant's character as at the time the visa was granted; or

(ii) the person would have been eligible for the grant of the visa under this Act or immigration instructions:

(f) in the case of an appellant liable for deportation under section 162, the Tribunal is not satisfied that—

(i) the person's recognition as a refugee or a protected person may have been procured by fraud, forgery, false or misleading representation, or concealment of relevant information; or

(ii) the matters dealt with in Articles 1D, 1E, and 1F of the Refugee Convention may not have been able to be properly considered by a refugee and protection officer (or a refugee status officer under the former Act) for any reason, including by reason of fraud, forgery, false or misleading representation, or concealment of relevant information.

Section 202(c): replaced, on 7 May 2015, by section 57 of the Immigration Amendment Act 2015 (2015 No 48).

Section 202(ca): inserted, on 7 May 2015, by section 57 of the Immigration Amendment Act 2015 (2015 No 48).

203 Process when entitlement to appeal on facts and humanitarian grounds

(1) A person who is entitled to and wishes to appeal both on the facts and on humanitarian grounds must lodge both appeals together within the relevant time limits.

(2) Where practicable, the Tribunal must consider both appeals together, but—

(a) must first consider the appeal on the facts; and

(b) may dispense with its consideration of the humanitarian appeal if the appellant's appeal on the facts is successful.

(3) This section is subject to sections 194(6) and 195(7).

204 Special process where refugee or protection status acquired through fraud, etc

(1) Subject to subsections (2) and (3), where a person who is liable for deportation under section 162 appeals against liability for deportation, the Tribunal must, in addition to considering the appeal on the facts (if any) or on humanitarian grounds (if lodged), determine whether the person is currently a refugee or a protected person in terms of sections 129 to 131.

(2) If the Tribunal has allowed an appeal on the facts under section 202(f), the Tribunal need not consider—

(a) whether the person is currently a refugee or a protected person; or

(b) any humanitarian appeal brought by the person.

(3) If the Tribunal does not allow an appeal on the facts under section 202(f), the Tribunal must—

(a) first determine whether to recognise the person as a refugee or a protected person in terms of sections 129, 130, and 131; and

(b) if it does not recognise the person as a refugee or a protected person, then determine any humanitarian appeal by the person.

(4) When determining whether to recognise a person as a refugee or a protected person for the purposes of this section, the Tribunal must determine the matter in accordance with section 198(1).

205 Special process if refugee or protected person liable for deportation under section 161

(1) This section applies if—

(a) a refugee or a protected person is liable for deportation under section 161; and

(b) a refugee and protection officer has determined that the deportation of the person is not prohibited under section 164; and

(c) the person appeals against that determination under section 161(2)(b).

(2) The Tribunal must—

(a) first determine whether the deportation of the person is prohibited under section 164; and

(b) if it determines that the deportation of the person is not prohibited, then determine any appeal on humanitarian grounds brought by the person.

Appeal on humanitarian grounds against liability for deportation

206 Who may appeal to Tribunal on humanitarian grounds

(1) The following persons may appeal to the Tribunal on humanitarian grounds against their liability for deportation:

(a) a person liable for deportation under section 154 on the grounds of being unlawfully in New Zealand:

(b) a temporary visa holder or interim visa holder liable for deportation under section 155, 156, or 157:

(c) a resident or permanent resident liable for deportation under section 155, 156, 158, 159, 160, or 161:

(d) a person liable for deportation under section 162.

(2) No person may appeal to the Tribunal on humanitarian grounds—

(a) against any liability for deportation arising from the expiry or cancellation of a limited visa; or

(b) if he or she is a person to whom section 115, 154(5), 210(2), or 216(2) applies; or

(c) whose liability for deportation arises by way of a deportation order under section 163; or

(d) if he or she holds a limited visa and is liable for deportation under section 155, 156, or 157; or

(e) if the person is liable for deportation under section 155 because he or she re-entered New Zealand while subject to a period of prohibition on entry.

(3) No person may appeal to the Tribunal on humanitarian grounds against his or her liability for deportation if the person has—

(a) failed to lodge a humanitarian appeal at the same time as lodging an appeal in relation to a claim or a subsequent claim, where he or she is required to do so under this Act; or

(b) had a humanitarian appeal heard by the Tribunal in relation to a claim or a subsequent claim.

Section 206(2)(b): amended, on 7 May 2015, by section 58(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 206(2)(c): amended, on 7 May 2015, by section 58(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 206(2)(d): inserted, on 7 May 2015, by section 58(3) of the Immigration Amendment Act 2015 (2015 No 48).

Section 206(2)(e): inserted, on 7 May 2015, by section 58(3) of the Immigration Amendment Act 2015 (2015 No 48).

207 Grounds for determining humanitarian appeal

(1) The Tribunal must allow an appeal against liability for deportation on humanitarian grounds only where it is satisfied that—

(a) there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand; and

(b) it would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand.

(2) In determining whether it would be unjust or unduly harsh to deport from New Zealand an appellant who became liable for deportation under section 161, and whether it would be contrary to the public interest to allow the appellant to remain in New Zealand, the Tribunal must have regard to any submissions of a victim made in accordance with section 208.

Compare: 1987 No 74 ss 47(3), 105(1A)

208 Right of victims to make submission on appeal

(1) In determining a humanitarian appeal by a person who becomes liable for deportation under section 161, the Tribunal must have regard to—

(a) any written submissions made to it by a victim of an offence or offences of which the appellant has been convicted and from which the liability for deportation arose; and

(b) any relevant written submissions made by a victim to the Minister under section 173.

(2) In addition to, or instead of, making written submissions under this section, the victim may, with the leave of the Tribunal, make oral submissions to the Tribunal at the hearing.

(3) The Tribunal must make available to a lawyer or agent acting for the appellant, on a request by the appellant, a copy of all written submissions made by the victim under section 173 or this section.

(4) The Tribunal, or a lawyer or agent acting for the appellant, must, on a request for the purpose, show the appellant a copy of all written submissions made by the victim under section 173 or this section. However, the appellant may not keep a copy of any of those submissions.

(5) Despite subsections (3) and (4), the Tribunal may withhold from the appellant and every lawyer or agent acting for the appellant (if any) either or both of the following if, in the Tribunal's opinion, that withholding is necessary to protect the physical safety or security of the victim concerned:

(a) any part of the victim's written submissions under section 173, whether or not that part was withheld by the Minister under section 173(4):

(b) any part of the victim's written submissions under this section.

(6) Despite subsection (1), the Tribunal must not have regard to any part of the victim's submissions that is withheld under subsection (5).

(7) In this section, **victim** means a victim of an offence of a kind referred to in section 29 of the Victims' Rights Act 2002.

Orders on determination of appeal

209 Tribunal may make orders considered necessary on allowing appeal against liability for deportation

If the Tribunal decides that an appeal against liability for deportation should be allowed, it may order that an immigration officer take such steps as it considers necessary to give effect to its decision.

210 Tribunal may order grant of visa on allowing appeal against liability for deportation

(1) Without limiting section 209, if the Tribunal decides that an appeal against liability for deportation should be allowed in the case of a person who is unlawfully in New Zealand or is the holder of a temporary entry class visa, the Tribunal may order an immigration officer to grant the successful appellant—

(a) a resident visa subject to such conditions (if any) as the Tribunal determines; or

(b) a temporary visa for a period not exceeding 12 months subject to such conditions (if any) as the Tribunal determines.

(2) If a temporary visa is granted following an order made under subsection (1)(b), no further appeal against liability for deportation may be brought by the holder upon the expiry of the visa or upon the holder earlier becoming liable for deportation.

(3) The Tribunal may order the imposition of any condition on the grant of a resident visa that it thinks fit, having regard to the reasons why the appellant was able to demonstrate exceptional circumstances of a humanitarian nature or why it was not contrary to the public interest to allow the appellant to remain in New Zealand, whether or not the condition is of a kind authorised by residence instructions.

(4) To avoid doubt, the Tribunal may order an immigration officer to grant a visa, and the officer must grant the visa, even though the person would normally be prohibited from being granted a visa under section 15 or 16.

(5) If the Tribunal orders the imposition of any condition on a visa,—

(a) the condition must be treated as if it were a condition imposed by the Minister under section 50 or 52 (as the case may be); and

(b) the condition must be notified to the visa holder in writing; and

(c) section 56(1) requires the holder to comply with the conditions of the visa.

(6) The chief executive must ensure that the terms of an order given under this section are complied with.

Compare: 1987 No 74 s 52

211 Effect of successful appeal against liability for deportation

(1) If the Tribunal allows an appeal under this Part against liability for deportation, the appellant's liability is cancelled and subsection (2), (3), or (4) applies, as the case may be.

(2) If the appellant is in custody under this Act, an immigration officer must immediately notify, in writing, the manager or other person in charge of the prison or other premises in which the appellant is detained that the appellant's liability for deportation is cancelled, and the appellant must be immediately released.

(3) If the appellant is subject to residence or reporting requirements under section 315, an immigration officer must immediately notify, in writing, the appellant (and, if applicable, his or her guarantor) that the appellant's liability for deportation is cancelled, and the appellant ceases to be subject to those requirements.

(4) If the appellant has been released on conditions under section 320, an immigration officer must immediately notify, in writing, the appellant that his or her liability for deportation is cancelled, and the appellant ceases to be subject to those conditions.

(5) Subsection (1) applies unless—

(a) the appeal concerned is a humanitarian appeal; and

(b) the appellant is a resident or a permanent resident; and

(c) the Tribunal instead suspends the appellant's liability for deportation under section 212.

(6) Nothing in this section limits section 209.

Compare: 1987 No 74 s 107

212 Tribunal may suspend liability for deportation on allowing humanitarian appeal

(1) On allowing any humanitarian appeal the Tribunal may, in the case of a resident or permanent resident, make an order suspending the appellant's liability for deportation for a period not exceeding 5 years, subject to such conditions (if any) as the Tribunal determines.

(2) If a person's liability for deportation has been suspended by the Tribunal under subsection (1), the Minister may subsequently apply to the Tribunal for a determination on whether the person has failed to meet any condition imposed by the Tribunal.

(3) If the Tribunal determines that the person has failed to comply with any condition,—

(a) the Tribunal may reactivate the person's liability for deportation by causing an immigration officer to serve a deportation liability notice on the person that sets out the grounds of the reactivation; and

(b) the person has 28 days from the date the notice is served to leave New Zealand before he or she may be deported.

(4) In the case of a person in imprisonment, the period referred to in subsection (1) commences on the date of the person's release from imprisonment.

(5) The suspension of a person's liability for deportation does not prevent the person from becoming liable for deportation on other grounds.

213 Effect of suspension

(1) If a person's liability for deportation is suspended by the Tribunal under section 212, during the period of the suspension—

(a) subsection (2), (3), or (4) applies, as the case may be; and

(b) the person may not apply for a visa of a different class or type; and

(c) the processing of any application made by the person for a visa of a different class or type must be suspended; and

(d) subject to sections 9 and 10 of the Citizenship Act 1977 and section 7(1)(b)(i) of the Citizenship (Western Samoa) Act 1982, the person may not be granted citizenship on the basis of meeting a requirement (or requirements) for the grant of New Zealand citizenship that the person hold a residence class visa.

(2) If the person is in custody under this Act, an immigration officer must immediately notify, in writing, the manager or other person in charge of the prison or other premises in which the person is detained that the person's liability for deportation is suspended, and the person must be immediately released.

(3) If the person is subject to residence or reporting requirements under section 315, an immigration officer must immediately notify, in writing, the person and the person's guarantor (if applicable) that the person's liability for deportation is suspended, and the person ceases to be subject to those requirements.

(4) If the person has been released on conditions under section 320, an immigration officer must immediately notify, in writing, the person that his or her liability for deportation is suspended, and the person ceases to be subject to those conditions.

(5) If the Minister determines that a person has met any conditions imposed by the Tribunal under section 212(1) for the duration of the suspension, the Minister must cancel the person's liability for deportation and notify the Tribunal accordingly.

(6) If the Tribunal did not impose conditions on the person under section 212(1) and the period of suspension has expired, the Minister must cancel the person's liability for deportation and notify the person and the Tribunal accordingly.

214 Effect of suspension on appeal

(1) This section applies if the Minister suspends a person's liability for deportation, and the person has lodged an appeal under this Part against that liability.

(2) If the person does not withdraw the appeal, the Tribunal may, on the application of the person, adjourn any appeal on humanitarian grounds lodged by the person.

(3) If the person's liability for deportation is cancelled under section 172 or 174(2), the Tribunal may dispense with its consideration of any aspects of the appeal that have not been determined at that point.

(4) If the person is served with a deportation liability notice under section 172(3), the Tribunal must then continue to determine any aspects of the person's appeal that have not yet been determined.

(5) To avoid doubt, a suspension of liability for deportation does not affect any time limit by which an appeal must be lodged under this Act.

215 Tribunal may reduce or remove period of prohibited entry under deportation order

(1) On declining an appeal against liability for deportation, the Tribunal may in its absolute discretion order the reduction, or removal altogether, of the period of any prohibition on entry to New Zealand that would otherwise apply under section 179 following the person's deportation from New Zealand.

(2) A reduction or removal under subsection (1) remains subject to section 180(1), unless the Tribunal otherwise orders.

216 Tribunal may make order delaying deportation if appeal unsuccessful

(1) On declining an appeal against liability for deportation, if the Tribunal considers it necessary to enable the appellant to remain in New Zealand for the purposes of getting his or her affairs in order, it may order—

(a) that the deportation of the appellant be delayed for a period not exceeding 12 months, commencing on the date of the Tribunal's decision; or

(b) that a temporary entry class visa, valid for a period not exceeding 12 months, commencing on the date of the Tribunal's decision, be granted to the appellant.

(2) If the Tribunal orders the grant of a visa under subsection (1)(b), no further appeal against liability for deportation may be brought by the holder upon the expiry of the visa or upon the holder earlier becoming liable for deportation.

Immigration and Protection Tribunal

217 Immigration and Protection Tribunal

(1) For the purposes of this Act there is a tribunal called the Immigration and Protection Tribunal.

(2) The functions of the Tribunal are—

(a) to determine appeals against—

(i) decisions to decline to grant residence class visas:

(ii) decisions in relation to recognition as a refugee or a protected person:

(iii) decisions to cease to recognise a person as a refugee or a protected person:

(iv) decisions to cancel the recognition of a New Zealand citizen as a refugee or a protected person:

(v) liability for deportation:

(b) to determine applications—

(i) made by refugee and protection officers in relation to the cessation of recognition of a person as a refugee or a protected person, if the recognition was originally determined by the Tribunal (or by the Refugee Status Appeals Authority under the former Act):

(ii) made by refugee and protection officers in relation to the cancellation of recognition of a New Zealand citizen as a refugee or a protected person, if the recognition was originally determined by the Tribunal (or by the Refugee Status Appeals Authority under the former Act):

(iii) made by the Minister under section 212(2) on whether a person has failed to meet his or her conditions of suspension of liability for deportation:

(c) to deal with certain transitional matters arising from the repeal of the Immigration Act 1987, in accordance with Part 12 of this Act.

218 Nature of Tribunal

(1) The Tribunal is a specialist body that has the role of deciding appeals and matters by making findings of fact, applying the relevant law, and making a determination.

(2) In carrying out its role, the proceedings of the Tribunal in any particular case may be, as the Tribunal thinks fit,—

(a) of an inquisitorial nature; or

(b) of an adversarial nature; or

(c) of both an inquisitorial and an adversarial nature.

219 Membership of Tribunal

(1) The Tribunal consists of—

(a) a chair, being a District Court Judge:

(b) such other members as may be appointed under subsection (3), being lawyers who have held a practising certificate for at least 5 years or have other equivalent or appropriate experience (whether in New Zealand or overseas):

(c) a representative of the United Nations High Commissioner for Refugees, to serve as an ex officio member in relation to matters relating to refugees:

(d) a District Court Judge seconded to the Tribunal under section 240 to exercise the jurisdiction of the Tribunal in relation to proceedings involving classified information.

(2) The chair of the Tribunal is appointed by the Governor-General on the advice of the Attorney-General, given after consultation with the Minister of Justice and the Minister.

(3) The members of the Tribunal are appointed by the Governor-General on the recommendation of the Minister of Justice made in consultation with the Minister.

(4) None of the following persons may be appointed as a member of the Tribunal:

(a) an immigration officer; or

(b) a refugee and protection officer; or

(c) any person who at any time in the previous 5 years has been—

(i) an immigration officer; or

(ii) a refugee and protection officer; or

(iii) an immigration officer, a visa officer, or a refugee status officer under the former Act.

220 Role of chair of Tribunal

(1) In addition to deciding appeals and matters in the Tribunal, the chair of the Tribunal is responsible for—

(a) making such arrangements as are practicable to ensure that the members of the Tribunal discharge their functions—

(i) in an orderly and expeditious manner; and

(ii) in a way that meets the purposes of this Act; and

(b) directing the education, training, and professional development of members of the Tribunal; and

(c) dealing with complaints made about members of the Tribunal.

(2) Without limiting subsection (1), the chair of the Tribunal may—

(a) issue practice notes (not inconsistent with this Act or any regulations made under it) for the purposes of regulating the practice and procedure of the Tribunal:

(b) develop a code of conduct for members of the Tribunal:

(c) require particular members of the Tribunal to determine particular appeals.

221 Exercise of jurisdiction

(1) For the purpose of any appeal or matter in its jurisdiction, the Tribunal consists of 1 member, except as provided in this section.

(2) The chair of the Tribunal may direct that, because of the exceptional circumstances of any case, the case is to be heard and determined by more than 1 member. In any such case the chair must designate—

(a) the members who are to hear and determine the case (being not more than 3 members); and

(b) the member who is to be the presiding member for the purposes of the hearing and determination.

(3) Where a case before the Tribunal relates to a refugee or a claimant for refugee status,—

(a) the ex officio member referred to in section 219(1)(c) may hear and be involved in the determination of the case; but

(b) this is in addition to the other member or members of the Tribunal required under subsection (1) or (2).

222 Procedure for determining appeals and matters generally

(1) The Tribunal must determine an appeal or matter with all reasonable speed.

(2) The chair of the Tribunal may decide the order in which appeals and matters are to be heard generally, or in any particular circumstances.

(3) No decision on an appeal or matter is to be called into question on the basis that the appeal or matter ought to have been heard or decided earlier or later than any other appeal, matter, or category of appeal or matter.

(4) The Tribunal may regulate its procedures as it sees fit, subject to this Act and any regulations made under this Act.

(5) This section is subject to section 257.

223 Chair to ensure appeals and matters heard expeditiously

(1) The chair of the Tribunal must make such directions as are necessary to ensure that appeals and matters are heard in an orderly and expeditious manner.

(2) Subsection (3) applies if—

(a) more than 1 appeal is lodged by the same person whether or not—

(i) relating to substantially the same set of circumstances; or

(ii) lodged at the same time; or

(b) appeals or matters that are lodged by different persons—

(i) are associated because—

(A) of the relationship of the appellant or appellants or affected person or persons; or

(B) they relate to the same person; and

(ii) relate to substantially the same set of circumstances; or

(c) an appeal or matter is lodged and a previous appeal or matter has already been determined in respect of the same person.

(3) If this subsection applies, the chair may, for the purposes of complying with subsection (1), direct that—

(a) the appeals or matters be determined by the same member of the Tribunal; or

(b) the appeals or matters be determined together by the same member of the Tribunal; or

(c) the appeal or matter be determined by the same member of the Tribunal who determined the previous appeal or matter.

224 Tribunal may dismiss frivolous or vexatious appeal

The Tribunal may at any time dismiss an appeal that it is satisfied is frivolous or vexatious.

224A Annual report on performance of Tribunal's functions

(1) The chair of the Tribunal must, in each year, provide a report to the Minister of Justice, the Minister of Immigration, and the Minister for Courts on the performance of the Tribunal's functions under this Act in respect of the financial year ending in that year.

(2) The report must include details of both the number of determinations and the nature of the determinations made by the Tribunal in the period to which the report relates.

(3) The Minister of Justice must present a copy of the report to the House of Representatives as soon as practicable after it is provided to that Minister.

Section 224A: inserted, on 7 May 2015, by section 59 of the Immigration Amendment Act 2015 (2015 No 48).

Procedure for appeals and matters

225 How appeal or matter lodged

(1) An appeal or matter must be lodged in the prescribed manner and be accompanied by the prescribed fee (if any).

(2) The appellant or affected person must—

(a) provide the Tribunal with a contact address and an address for service; and

(b) notify the Tribunal in a timely manner of a change in either of those addresses.

(3) *[Repealed]*

(4) *[Repealed]*

Section 225(2)(a): replaced, on 7 May 2015, by section 60(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 225(2)(b): amended, on 7 May 2015, by section 60(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 225(3): repealed, on 7 May 2015, by section 60(3) of the Immigration Amendment Act 2015 (2015 No 48).

Section 225(4): repealed, on 7 May 2015, by section 60(3) of the Immigration Amendment Act 2015 (2015 No 48).

226 Proceedings on appeal or matter

(1) It is the responsibility of an appellant or affected person to establish his or her case or claim, and the appellant or affected person must ensure that all information, evidence, and submissions that he or she wishes to have considered in support of the appeal or matter are provided to the Tribunal before it makes its decision on the appeal or matter.

(2) Where an appeal or matter is lodged,—

(a) subject to agreement between the Tribunal and the chief executive, the Tribunal must give the chief executive a copy of the notice of appeal or matter and any information, evidence, or submissions lodged by the appellant or affected person; and

(b) the chief executive must, in the time allowed by the Tribunal for the purpose, lodge with the Tribunal any file relevant to the appeal or matter that is held by the Department.

(3) The Minister, the chief executive, or a refugee and protection officer may also, in the time allowed by the Tribunal for the purpose, lodge with the Tribunal any other information, evidence, or submissions in relation to the appeal or matter as he or she thinks fit.

Compare: 1987 No 74 ss 18F(3), 129P(1)

227 Minister or Department is party to proceedings

The Minister, the chief executive, or a refugee and protection officer, as the case may be, is a party to any proceedings under this Act, including proceedings involving classified information.

228 Information Tribunal may consider

(1) When considering an appeal or a matter, the Tribunal may seek information from any source.

(2) However, the Tribunal is not obliged to seek any information, evidence, or submissions further to those provided by the appellant or the affected person and the Minister, the chief executive, or a refugee and protection officer (as the case may be), and may determine the appeal or matter only on the basis of the information, evidence, and submissions provided by those persons.

Compare: 1987 No 74 ss 18F(2), 129P(2), 129S

229 Tribunal may require chief executive to provide information

(1) The Tribunal may require the chief executive to seek and provide information relevant to an appeal or matter, and the chief executive must comply, to the extent practicable, with such a requirement.

(2) Where the chief executive provides information to the Tribunal under subsection (1), the chief executive must be treated as an agent of the Tribunal for the purposes of the Official Information Act 1982 and the Privacy Act 1993.

(3) No party to the appeal or matter may request the Tribunal to exercise its powers under this section.

(4) This section is subject to section 35(3).

Compare: 1987 No 74 ss 18F(3), 129P(4)

230 Tribunal must disclose prejudicial information

(1) Except as provided in subsection (3), the Tribunal must disclose to the appellant or affected person, and give the appellant or affected person an opportunity to rebut or comment on, information or material that—

(a) is provided to the Tribunal by a source other than the appellant or affected person; and

(b) is or may be prejudicial to the appellant or affected person; and

(c) the Tribunal intends to take into account in determining the appeal or matter.

(2) The Tribunal must set a reasonable time within which the appellant or affected person may rebut or comment on the information or material.

(3) Subsection (1) does not require the Tribunal to disclose any information or material if—

(a) the disclosure would be likely to endanger the safety of any person; or

(b) it is classified information that the Tribunal must keep confidential and must not disclose under section 259.

(4) The Tribunal must, however, notify the appellant or affected person of the fact of any non-disclosure on the grounds specified in subsection (3).

Compare: 1987 No 74 s 18F(7)–(9)

231 Findings of credibility and fact

(1) On any appeal or matter, the Tribunal may rely on any finding of credibility or fact—

(a) by the Tribunal in any previous appeal or matter determined by the Tribunal that involved the appellant or affected person; or

(b) by any appeals body in any previous appeal or matter determined by the appeals body that involved the appellant or affected person.

(2) A person may not challenge any finding of credibility or fact that may be relied on by the Tribunal under subsection (1).

(3) For the purposes of subsection (1)(b), **matter** includes an application by a refugee status officer under section 129L(1)(f) of the former Act.

Compare: 1987 No 74 s 129P(9)

232 Tribunal may require provision of biometric information

For the purposes of assisting the Tribunal to determine an appeal or matter, the Tribunal may require the appellant or affected person to allow biometric information to be collected from him or her.

233 When Tribunal must or may provide oral hearing

(1) The Tribunal must provide an oral hearing in the case of an appeal against liability for deportation by a resident or permanent resident.

(2) The Tribunal may, in its absolute discretion, provide an oral hearing in any other appeal against liability for deportation.

(3) The Tribunal must provide an oral hearing in the case of an appellant or affected person currently or previously recognised as a refugee or a protected person, or a claimant for such recognition, unless—

(a) the person was interviewed by a refugee and protection officer (or a refugee status officer under the former Act) in the course of determining the relevant issue at first instance or, having been given an opportunity to be interviewed, failed to take that opportunity; and

(b) the Tribunal considers that the appeal or other contention of the person—

(i) is prima facie manifestly unfounded or clearly abusive; or

(ii) relates to a subsequent claim for refugee or protection status.

(4) The Tribunal may, in its absolute discretion, provide an oral hearing in the case of an appeal that relates to a subsequent claim for refugee or protection status.

Section 233: replaced, on 19 June 2013, by section 9 of the Immigration Amendment Act 2013 (2013 No 39).

234 Decision on papers in other circumstances

(1) Despite section 233, the Tribunal may determine an appeal or matter without an oral hearing if the appellant or affected person fails without reasonable excuse to attend a hearing notified by the Tribunal.

(2) Except as otherwise provided in section 233 (as subject to subsection (1) of this section), the Tribunal must determine an appeal or matter on the papers.

235 Tribunal may issue single decision when appeals or matters heard together

In any proceedings in which more than 1 appeal or matter is heard together, the Tribunal may issue a single decision in respect of the appeals or matters.

236 Appeals against deportation liability where person serving prison sentence

(1) Where a person appealing against his or her liability for deportation is serving a sentence of imprisonment in a prison, the Tribunal must, with a view to determining the appeal before the person's release, consider and determine any appeal on humanitarian grounds as close as practicable to the date of the person's

parole eligibility date or (in the case of a person serving a short-term sentence) statutory release date.

(2) In this section, **parole eligibility date**, **short-term sentence**, and **statutory release date** have the meanings given in section 4 of the Parole Act 2002.

237 Procedure

Schedule 2 applies in relation to the proceedings of the Tribunal.

238 Withdrawal of appeal or matter

(1) An appeal to the Tribunal may be withdrawn by the appellant at any time.

(2) A matter lodged with the Tribunal may be withdrawn by the applicant at any time.

(3) If a person withdraws an appeal against liability for deportation, the person may be served with a deportation order and the person's deportation may be executed.

(4) In any other case, if an appeal is withdrawn, the decision appealed against stands.

239 Deemed withdrawal of certain appeals where person leaves New Zealand

(1) A person's appeal to the Tribunal is deemed to be withdrawn when the person leaves New Zealand if the appeal is—

(a) an appeal against liability for deportation, if the appeal is brought by a person liable for deportation under any of sections 154 to 158, 161, and 162; or

(b) an appeal against a decision to decline recognition as a refugee or a protected person; or

(c) an appeal against a decision to cease to recognise a person as a refugee or a protected person.

(2) Subsection (1) does not apply if—

(a) the person's liability for deportation has been suspended under section 172(2); and

(b) the person leaves New Zealand during the suspension period.

(3) In determining whether a person has left New Zealand, the Tribunal may rely on a certificate made under section 366(2)(17).

Special procedure where classified information involved

240 How proceedings involving classified information to be conducted by Tribunal

(1) If proceedings before the Tribunal involve classified information, the Tribunal must consist of—

(a) the chair of the Tribunal; or

(b) the chair of the Tribunal and 1 or 2 other members.

(2) If subsection (1)(b) applies, each member must be—

(a) a member of the Tribunal who is a District Court Judge; or

(b) a nominated District Court Judge.

(3) In this section, **nominated District Court Judge** means—

(a) the Chief District Court Judge; or

(b) a District Court Judge (other than the chair of the Tribunal) nominated by the Chief District Court Judge to be seconded to the Tribunal to exercise its jurisdiction in relation to proceedings involving classified information.

(4) For the purposes of subsection (2)(b), the Chief District Court Judge may nominate a maximum of 2 District Court Judges (other than himself or herself) at any one time.

241 Presentation of classified information to Tribunal

(1) The Tribunal must be given access to classified information that—

(a) was relied on to make a decision that is on appeal to the Tribunal; or

(b) is first raised in the course of an appeal to, or a matter before, the Tribunal.

(2) Before holding a substantive hearing on the appeal or matter, the Tribunal must hold a closed hearing at which the chief executive of the relevant agency makes a presentation on the classified information (a **preliminary hearing**).

(3) The purpose of the preliminary hearing is not to enable the Tribunal to consider or determine the matters in section 243, but to enable the Tribunal, the special advocate, and counsel assisting the court and the special adviser (if any and if relevant) to understand the classified information and to question—

(a) the chief executive of the relevant agency about the information; or

(b) if necessary, any other person from the relevant agency about the information.

(4) The preliminary hearing may not occur before the date that is 28 days after the appellant or affected person is provided with the names of possible special advocates under section 265(2).

(5) The content of the presentation is to be determined by the chief executive of the relevant agency.

242 Tribunal to approve summary of allegations

(1) The purpose of this section is to give an appellant or affected person an opportunity to comment on potentially prejudicial information in the course of proceedings involving classified information before the Tribunal.

(2) If proceedings before the Tribunal involve classified information,—

(a) the chief executive of the relevant agency must develop, and provide to the Tribunal for approval, a summary of the allegations arising from the classified information; and

(b) the Tribunal must—

(i) approve the summary developed under paragraph (a); or

(ii) modify the summary, and then approve it; and

(c) following approval (with or without modification) of the summary, the Tribunal must provide the summary to the appellant or affected person, the special advocate, and counsel assisting the court and the special adviser (if any and if relevant).

(3) For the purposes of making its decision, the Tribunal may rely on the classified information only to the extent that the allegations arising from the information can be summarised without disclosing classified information that would be likely to prejudice the interests described in section 7(3).

(4) In determining whether, or how, to modify the summary, the Tribunal—

(a) must have regard to the views of the relevant agency; and

(b) may have regard to the views of the applicant or the person who made the decision to which the proceedings apply.

(5) Nothing in this section requires the summary to—

(a) list any documents or other source material containing classified information; or

(b) detail the contents of any documents or other source material containing classified information; or

(c) specify the source of any documents or other source material containing classified information.

(6) An updated summary must be prepared and provided in the same way as if it were a summary prepared under subsection (2) if—

(a) any classified information that was proposed to be relied on in the course of the appeal or matter is withdrawn (unless all the information is withdrawn); or

(b) further relevant classified information becomes available that may be relied on in the course of the appeal or matter.

(7) To avoid doubt, a special advocate may not be involved in the process of approving, amending, or updating a summary (including an updated summary).

243 Matters to be considered by Tribunal

(1) Where proceedings involve classified information, the Tribunal must determine the following matters:

(a) whether the classified information is relevant to the subject matter of the appeal or matter concerned:

(b) whether the classified information is information of a kind specified in section 7(2), and whether its disclosure would be disclosure of a kind specified in section 7(3):

(c) whether the classified information is credible:

(d) the substantive grounds of the appeal or matter, having regard to—

(i) all the information available to the Tribunal, including any relevant and credible classified information; and

(ii) the relevant criteria under which the decision appealed against or to which the matter relates was made.

(2) If the Tribunal considers that—

(a) any classified information is not relevant to the appeal or matter, it must disregard that information; and

(b) any information does not meet the criteria specified in section 7(2) and (3), the Tribunal must disregard that information unless—

(i) the relevant agency agrees to the disclosure of the information to the appellant or affected person; or

(ii) the Tribunal considers that it is of benefit to the appellant or affected person; and

(c) any classified information is not credible, it must disregard that information.

(3) To avoid doubt, classified information may be relevant to an appeal or matter whether it is beneficial or detrimental to the appellant or affected person.

244 Tribunal may require mixture of closed and open hearings

In any oral hearing for proceedings involving classified information, the Tribunal may require a mixture of—

(a) closed hearings for those parts of the hearing in which classified information is involved; and

(b) hearings at which the appellant or affected person may be present.

Appeal from Tribunal and judicial review

245 Appeal to High Court on point of law by leave

(1) Where any party to an appeal to, or matter before, the Tribunal (being either the person who appealed or applied to the Tribunal, an affected person, or the Minister, chief executive, or other person) is dissatisfied with any determination of the Tribunal in the proceedings as being erroneous in point of law, that party may, with the leave of the High Court (or, if the High Court refuses leave, with

the leave of the Court of Appeal), appeal to the High Court on that question of law.

(1A) A decision by the Court of Appeal to refuse leave to appeal to the High Court is final.

(2) An application to the High Court under this section for leave to appeal must be made—

(a) not later than 28 days after the date on which the decision of the Tribunal to which the appeal relates was notified to the party appealing; or

(b) within such further time as the High Court may allow on application made before the expiry of that 28-day period.

(3) In determining whether to grant leave to appeal under this section, the court to which the application for leave is made must have regard to whether the question of law involved in the appeal is one that by reason of its general or public importance or for any other reason ought to be submitted to the High Court for its decision.

(4) On the appeal, the High Court must determine the question or questions of law arising in the proceedings, and may then—

(a) confirm the decision in respect of which the appeal has been brought; or

(b) remit the matter to the Tribunal with the opinion of the High Court, together with any directions as to how the matter should be dealt with; or

(c) make such other orders in relation to the matter as it thinks fit.

(5) Subject to subsection (2), every appeal under this section must be dealt with in accordance with the rules of the court, with any modifications necessary to reflect the provisions of this Act, including any ancillary general practices and procedures developed under section 260.

Compare: 1987 No 74 s 115

Section 245(1A): inserted, on 7 May 2015, by section 61(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 245(2): amended, on 7 May 2015, by section 61(2) of the Immigration Amendment Act 2015 (2015 No 48).

246 Appeal to Court of Appeal on point of law by leave

(1) Any party to an appeal under section 245 who is dissatisfied with any determination of the High Court in the proceedings as being erroneous in point of law may, with the leave of that court (or, if the High Court refuses leave, with the leave of the Court of Appeal), appeal to the Court of Appeal. Section 56 of the Senior Courts Act 2016 applies to any such appeal.

(2) In determining whether to grant leave to appeal under this section, the court to which the application for leave is made must have regard to whether the question of law involved in the appeal is one that by reason of its general or public

importance or for any other reason ought to be submitted to the Court of Appeal for its decision.

(3) The court granting leave under this section may in its discretion impose such conditions as it thinks fit, whether as to costs or otherwise.

(4) Every appeal under this section must be dealt with in accordance with the rules of the court, with any modifications necessary to reflect the provisions of this Act, including any ancillary general practices and procedures developed under section 260.

Compare: 1987 No 74 s 116

Section 246(1): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

247 Special provisions relating to judicial review

(1) Any review proceedings in respect of a statutory power of decision arising out of or under this Act must be commenced not later than 28 days after the date on which the person concerned is notified of the decision, unless—

(a) the High Court decides that, by reason of special circumstances, further time should be allowed; or

(b) leave is required, under section 249(3), before proceedings may be commenced (in which case section 249(4) applies).

(2) *[Repealed]*

(3) In this section, **statutory power of decision** has the same meaning as in section 4 of the Judicial Review Procedure Act 2016.

(4) Nothing in this section limits the time for bringing review proceedings challenging the vires of any regulations made under this Act.

Compare: 1987 No 74 s 146A

Section 247(1): replaced, on 7 May 2015, by section 62 of the Immigration Amendment Act 2015 (2015 No 48).

Section 247(2): repealed, on 7 May 2015, by section 62 of the Immigration Amendment Act 2015 (2015 No 48).

Section 247(3): amended, on 1 March 2017, by section 24 of the Judicial Review Procedure Act 2016 (2016 No 50).

248 Minister, chief executive, or refugee and protection officer may be respondent in review proceedings relating to Tribunal decision

The Minister, the chief executive, or a refugee and protection officer, as the case may be, may be a respondent in any review proceedings relating to a decision of the Tribunal.

249 Restriction on judicial review of matters within Tribunal's jurisdiction

(1) No review proceedings may be brought in any court in respect of a decision where the decision (or the effect of the decision) may be subject to an appeal to

the Tribunal under this Act unless an appeal is made and the Tribunal issues final determinations on all aspects of the appeal.

(2) No review proceedings may be brought in any court in respect of any matter before the Tribunal unless the Tribunal has issued final determinations in respect of the matter.

(3) Review proceedings may then only be brought in respect of a decision or matter described in subsection (1) or (2) if the High Court has granted leave to bring the proceedings or, if the High Court has refused to do so, the Court of Appeal has granted leave.

(4) An application to the High Court for leave to bring review proceedings must be made—

(a) not later than 28 days after the date on which the Tribunal's determination in respect of the decision or matter to which the review proceedings relate is notified to the person bringing the proceedings; or

(b) within such further time as the High Court may allow on application made before the expiry of that 28-day period.

(5) A decision by the Court of Appeal to refuse leave to bring review proceedings in the High Court is final.

(6) In determining whether to grant leave for the purposes of this section, the court to which the application for leave is made must have regard to—

(a) whether review proceedings would involve issues that could not be adequately dealt with in an appeal against the final determination of the Tribunal; and

(b) if paragraph (a) applies, whether those issues are, by reason of their general or public importance or for any other reason, issues that ought to be submitted to the High Court for review.

(7) A court that grants leave under subsection (3) to bring review proceedings must state the issue or issues to be determined in the proceedings.

(8) Nothing in this section limits any other provision of this Act that affects or restricts the ability to bring review proceedings.

Section 249: replaced, on 7 May 2015, by section 63 of the Immigration Amendment Act 2015 (2015 No 48).

249A Applications for appeal and judicial review of Tribunal decision to be lodged together

(1) This section applies if a person intends to both appeal against a determination of the Tribunal under this Act and bring review proceedings in respect of that same decision.

(2) The person must—

(a) lodge the application for leave to appeal and the application for leave to bring review proceedings together; and

(b) if both applications for leave are granted, lodge the application for appeal and the application for judicial review together.

(3) The High Court must, unless it considers it impracticable in the particular circumstances of the case to do so,—

(a) endeavour to determine both applications for leave together; and

(b) if both applications for leave are granted, endeavour to hear the appeal and the review proceedings together.

Section 249A: inserted, on 7 May 2015, by section 63 of the Immigration Amendment Act 2015 (2015 No 48).

249B Appeal to Court of Appeal against judicial review of matters within Tribunal's jurisdiction

(1) This section applies in respect of judicial review proceedings for which leave was granted under section 249(3).

(2) Any party to the proceedings who is dissatisfied with any determination of the High Court in the proceedings may, with the leave of the High Court (or, if the High Court refuses leave, with the leave of the Court of Appeal), appeal to the Court of Appeal. Section 56 of the Senior Courts Act 2016 applies to any such appeal.

(3) In determining whether to grant leave to appeal under this section, the court to which the application for leave is made must have regard to whether the issue involved in the appeal is one that, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for its decision.

Section 249B: inserted, on 7 May 2015, by section 63 of the Immigration Amendment Act 2015 (2015 No 48).

Section 249B(2): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

250 Certain appeals and review proceedings to be treated as priority fixture

All courts must hear and determine any appeal or review proceedings relating to the following persons as if the appeal or review had been granted a priority fixture:

(a) persons who are unlawfully in New Zealand:

(b) persons who are not New Zealand citizens and who hold temporary entry class visas.

251 Relationship with Senior Courts Act 2016

The Senior Courts Act 2016 is subject to sections 247, 248, 249, 250, and 262.

Section 251: replaced, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

General provisions relating to proceedings involving classified information

252 Proceedings involving classified information may be heard only by nominated Judge

(1) Where proceedings involving classified information are to be heard by the High Court, the proceedings must be heard by 1 or more nominated Judges.

(2) In this section and section 253, **nominated Judge** means—

(a) the Chief High Court Judge:

(b) a High Court Judge nominated by the Chief High Court Judge to hear and determine proceedings involving classified information.

(3) For the purposes of subsection (2)(b), the Chief High Court Judge may nominate a maximum of 2 High Court Judges (other than himself or herself) at any one time.

253 Appeal to High Court or review proceedings involving classified information

(1) This section applies where an appeal or review proceedings in the High Court involve classified information.

(2) Where a party raises classified information in an appeal or review proceedings, the nominated Judge must consider the information and any submissions made in relation to it in order to determine whether it is relevant to the appeal or review proceedings.

(3) Where the court determines that the classified information is relevant to the appeal or review proceedings, sections 252 and 255 to 270 apply.

(4) Where the nominated Judge determines that the classified information is not relevant to the appeal or review proceedings, section 259(3) to (8) applies to the classified information raised.

254 Appeal to Court of Appeal or Supreme Court involving classified information

(1) This section applies where classified information is relied on in a decision (whether on appeal, review, or otherwise) that is subject to appeal to—

(a) the Court of Appeal, whether under section 246 or otherwise; or

(b) the Supreme Court.

(2) Where a party raises classified information in an appeal or review proceedings, the court must consider the information and any submissions made in relation to it in order to determine whether it is relevant to the appeal or review proceedings.

(3) Where the court determines that the classified information is relevant to the appeal or review proceedings, sections 255 to 270 apply.

(4) Where the court determines that the classified information is not relevant to the appeal or review proceedings, section 259(3) to (8) apply to the classified information raised.

255 Appeal period where decision involving classified information to be appealed to Court of Appeal or Supreme Court

Where any decision on any appeal or review or other proceedings involving classified information is to be appealed to the Court of Appeal or to the Supreme Court, the appeal must be lodged not later than 10 days after the appellant is notified of the decision being appealed against.

256 Court to approve summary of allegations

(1) The purpose of this section is to give an appellant, a respondent, or an affected person, as the case may be, an opportunity to comment on potentially prejudicial information in the course of proceedings involving classified information in a court.

(2) If proceedings before a court involve classified information,—

(a) the chief executive of the relevant agency must develop, and provide to the court for approval, a summary of the allegations arising from the classified information; and

(b) the court must—

(i) approve the summary developed under paragraph (a); or

(ii) modify the summary and then approve it; and

(c) following approval (with or without modification) of the summary, the court must provide the summary to the appellant, respondent, or affected person, the special advocate, and counsel assisting the court and the special adviser (if any and if relevant).

(3) For the purposes of making its decision, the court may rely on the classified information only to the extent that the allegations arising from the information can be summarised without disclosing classified information that would be likely to prejudice the interests described in section 7(3).

(4) In determining whether, or how, to modify the summary, the court—

(a) must have regard to the views of the relevant agency; and

(b) may have regard to the views of the person who made the decision to which the proceedings apply or who made the application to which the proceedings apply.

(5) Nothing in this section requires the summary to—

(a) list any documents or other source material containing classified information; or

(b) detail the contents of any documents or other source material containing classified information; or

(c) specify the source of any documents or other source material containing classified information.

(6) An updated summary must be prepared and provided in the same way as if it were a summary prepared under subsection (2), if—

(a) any classified information that was proposed to be relied on in the course of the proceedings is withdrawn (unless all the information is withdrawn); or

(b) further relevant classified information becomes available that will be relied on in the course of the proceedings.

257 Priority or urgency to be afforded to proceedings involving classified information

(1) A court and the Tribunal must give priority to setting down and determining any proceedings involving classified information.

(2) A court must treat with urgency proceedings involving classified information in relation to a person—

(a) whose deportation has been ordered under section 163; or

(b) who is being detained under Part 9.

(3) Nothing in this section prevents a party to proceedings in the Tribunal or a court from requesting urgency in any other case.

258 Relevant agency entitled to be party to proceedings involving classified information

(1) Where any proceedings involving classified information are to be heard by the Tribunal or a court, the relevant agency is entitled to be a party to the proceedings.

(2) The chief executive of the Department must notify the chief executive of the relevant agency about any proceedings involving classified information.

259 Obligation and powers of Tribunal and courts in relation to classified information

(1) The Minister or a refugee and protection officer (as appropriate) must provide to the Tribunal or a court (as appropriate) classified information—

(a) relied on in making a decision that is appealed or subject to review proceedings in accordance with this Act; or

(b) first raised in the course of an appeal to, or a matter before, the Tribunal.

(2) Before providing the classified information, the Minister or the refugee and protection officer must consult the chief executive of the relevant agency.

(3) The Tribunal and the courts must keep confidential and must not disclose any information provided as classified information, even if they consider that the

information does not meet the criteria set out in section 7(2) and (3), unless the chief executive of the relevant agency consents to its release.

(4) Subsection (3) applies both during and after completion of proceedings involving classified information.

(5) In any oral hearing, the Tribunal and the courts must receive or hear the following in a closed hearing:

(a) any information provided as classified information:

(b) any submissions in relation to information provided as classified information.

(6) In any proceedings involving classified information, the Tribunal or a court may, in order to comply with subsection (3), make 1 or more of the following orders:

(a) an order forbidding publication of any report or account of the whole or any part of the evidence adduced or the submissions made in the proceedings:

(b) an order forbidding the publication of the name of any witness or witnesses, or any name or particulars likely to lead to the identification of any witness or witnesses:

(c) subject to subsection (5), an order excluding any person from the whole or any part of the Tribunal's or the court's proceedings, including—

(i) the appellant or the appellant's representative; or

(ii) the affected person or the affected person's representative; or

(iii) staff of the Tribunal or court.

(7) An order made under subsection (6)—

(a) may be made for a limited period or permanently; and

(b) if it is made for a limited period, may be renewed for a further period or periods by the Tribunal or the court; and

(c) if it is made permanently, may be reviewed by the Tribunal or the court at any time.

(8) Nothing in this section limits section 27 of the Crown Proceedings Act 1950 or any rule of law that authorises or requires the withholding of a document or the refusal to answer a question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

Compare: 1987 No 74 s 82(1), (3)

260 Ancillary general practices and procedures to protect classified information

(1) Any general practices and procedures that may be necessary to implement the procedures specified in sections 240 to 244, 252 to 270, 325, and 326 or to en-

sure that classified information is protected in all proceedings involving classified information must be agreed between—

(a) the chair of the Tribunal and the Attorney-General, in relation to proceedings involving classified information heard by the Tribunal; and

(b) the Chief Justice and the Attorney-General, in relation to all other proceedings.

(2) Without limiting subsection (1), general practices and procedures may be agreed on the following matters:

(a) measures relating to the physical protection of the classified information during and after all proceedings involving classified information:

(b) the manner in which the classified information may be provided to the Tribunal or the court:

(c) measures to preserve the integrity of the classified information until any appeals are withdrawn or finally determined.

261 No disqualification by reason of security briefing

No Judge or member of the Tribunal is disqualified from hearing any proceedings involving classified information by reason of having received a briefing on security matters in general from any agency.

262 Restriction on appeal and review

(1) No appeal or review proceedings may be brought in respect of the use of classified information for the purposes of this Act except as provided for in this Act.

(2) To avoid doubt and without limiting subsection (1) or section 249, no appeal lies and no review proceedings may be brought in respect of—

(a) a determination of the Minister under section 33 that classified information may be relied on in making a decision under this Act:

(b) the form or content of a summary prepared and provided under section 38 (including any updated summary):

(c) the form or content of information provided under section 39:

(d) the form or content of a presentation made by the chief executive of a relevant agency under section 241:

(e) the form or content of a summary developed, provided, and approved under section 242 or 256 (including any updated summary), including the decision whether to modify, and the nature of any modifications to, the summary:

(f) a decision to withdraw, update, or add to classified information.

(3) No appeal under section 245 may be brought in relation to any proceedings involving classified information that are before the Tribunal unless the Tribunal has issued final determinations on all matters subject to the proceedings.

(4) No review proceedings may be brought in relation to any appeal or matter before the Tribunal to which subsection (3) or sections 240 to 244 apply unless the Tribunal has issued final determinations on all matters subject to the appeal or matter.

Special advocates

263 Role of special advocates

(1) The role of a special advocate is to represent a person who is the subject of—

(a) a decision made involving classified information; or

(b) proceedings involving classified information.

(2) In particular, a special advocate may—

(a) lodge or commence proceedings on behalf of the person:

(b) make oral submissions and cross-examine witnesses at any closed hearing:

(c) make written submissions to the Tribunal or the court, as the case may be.

(3) At all times a special advocate must—

(a) ensure that the confidentiality of the classified information remains protected; and

(b) act in accordance with his or her duties as an officer of the High Court.

(4) The Minister or a refugee and protection officer (as appropriate) must provide a special advocate with access to the classified information—

(a) relied on in making the decision being appealed against; or

(b) provided to the Tribunal for the purpose of determining the matter; or

(c) provided to the Tribunal or the court in the appeal or in the review proceedings; or

(d) provided to the court in warrant of commitment proceedings.

(5) Before providing access to the classified information, the Minister or the refugee and protection officer must consult the chief executive of the relevant agency.

(6) A special advocate must keep confidential and must not disclose classified information, except as expressly provided under this Act.

(7) The chief executive of the Department must meet the actual and reasonable costs of a special advocate on a basis agreed between the special advocate and the designated agency.

264 Recognition of special advocates

(1) A special advocate is a lawyer (as defined in section 6 of the Lawyers and Conveyancers Act 2006) who has been recognised as a special advocate by an agency designated for the purpose by the Prime Minister.

(2) The designated agency may recognise a lawyer as a special advocate if—

(a) the lawyer holds an appropriate security clearance given by the chief executive of the Ministry of Justice; and

(b) the designated agency is satisfied that the lawyer has appropriate knowledge and experience to be recognised as a special advocate.

(3) Recognition under this section continues for 5 years, but the designated agency may recognise a lawyer as a special advocate for further 5-year periods.

(4) The designated agency may withdraw a special advocate's recognition if the special advocate—

(a) ceases to hold an appropriate security clearance; or

(b) is suspended from practice as a barrister, a solicitor, or both, under the Lawyers and Conveyancers Act 2006; or

(c) is struck off the roll of barristers and solicitors of the High Court.

(5) The designated agency must, in addition to recording the persons recognised by it as special advocates, maintain a list of special advocates who may represent persons in proceedings under Part 9, to cover the situation where—

(a) a person has not yet appointed a special advocate to represent him or her in any appeal, matter, or review proceedings involving classified information; and

(b) classified information may be relied on in determining an application made under that Part.

265 Appointment of special advocate in individual case

(1) The Minister or a refugee and protection officer (as appropriate) must notify the designated agency if it is likely that a decision under this Act (other than a decision on appeal to, or in relation to a matter before, the Tribunal)—

(a) will be made relying on classified information; and

(b) may be subject to appeal.

(2) The designated agency must provide the names of no fewer than 3 possible special advocates to a person who is the subject of a decision under this Act (other than a decision on appeal to, or in relation to a matter before, the Tribunal)—

(a) if the decision relies on classified information and a person subject to the decision appeals it; and

(b) not later than 3 days after the person lodges the appeal.

(3) The designated agency must not provide the name of a special advocate unless the special advocate is reasonably available, having regard to the time frames in this Part.

(4) The chief executive or the Minister (as appropriate) must notify the designated agency if—

(a) classified information is first raised or proposed to be raised in the course of an appeal to, or a matter before, the Tribunal; or

(b) a person appeals against a decision of the Tribunal and the Tribunal relied on classified information in making the decision; or

(c) a person brings review proceedings in relation to any decision made under this Act and the decision maker relied on classified information in making the decision.

(5) The designated agency must provide the names of no fewer than 3 possible special advocates to the appellant, applicant, or affected person, as the case may be, no later than 3 days after receiving a notification under subsection (4).

(6) An appellant, applicant, or affected person, as the case may be, must determine whether to appoint a special advocate, and which special advocate to appoint, and notify the designated agency accordingly, not later than 7 days after being notified of the names of possible special advocates.

(7) If the appellant, applicant, or affected person does not appoint a special advocate, the Department must make arrangements with the designated agency for a special advocate to be available on behalf of the person.

(8) Subsection (6) does not apply if the appellant or applicant is the Minister, the chief executive, or a refugee and protection officer.

266 Appointment of special advocate for purposes of Part 9 proceedings

(1) This section applies to a person if the person—

(a) has not appointed a special advocate to represent him or her in any appeal, matter, or review proceedings involving classified information; and

(b) is the subject of an application under Part 9 in which classified information may be relied on in determining the application.

(2) If the person has been arrested and detained under Part 9, the Department must contact the designated agency as soon as practicable after the person is arrested and detained and make arrangements for a special advocate to whom section 264(5) applies to be available, on behalf of the person, for the warrant of commitment hearing.

(3) If the person has been detained under a warrant of commitment, or released on conditions under section 320, the Department must contact the designated agency as soon as practicable after it becomes apparent that this section applies to the person and make arrangements for a special advocate to whom section

264(5) applies to be available, on behalf of the person, for the hearing of the application.

(4) If an application on a matter to which subsection (2) or (3) applies is made directly to the High Court, or is transferred to the High Court, the special advocate concerned must be provided with access to the classified information provided to the High Court before the application is heard (and he or she may not unreasonably refuse to be provided with access to the classified information).

(5) The designated agency must not provide the name of a special advocate unless the special advocate is reasonably available, having regard to the time frames in Part 9.

267 Communication between special advocate and person to whom classified information relates

(1) In this section (other than subsection (4)), **person A** means—

(a) a person who has appointed a special advocate under section 265(6); or

(b) a person to whom a special advocate has been made available under section 265(7) or 266.

(2) In subsection (4), **person A** means—

(a) a person who has appointed a special advocate under section 265(6); or

(b) a person to whom a special advocate has been made available under section 265(7).

(3) A special advocate may communicate with person A or person A's representative on an unlimited basis until the special advocate has been provided with access to the classified information concerned, but once he or she has been provided with access to the classified information, he or she may not communicate with any person about any matter connected with the proceedings involving the classified information except in accordance with this section.

(4) The Minister or a refugee and protection officer (as appropriate) must provide the special advocate with access to the classified information on any date that is 29 days or more after the date on which person A was provided with the names of possible special advocates under section 265(2) or (5) or, as the case may be, had a special advocate made available to him or her under section 265(7).

(5) A special advocate may not unreasonably refuse to be provided with access to the classified information after the date after which access may be provided under subsection (4).

(6) A special advocate may, without the approval of the Tribunal or the court, communicate about the proceedings with—

(a) the Judge or Judges of the Tribunal or the court:

(b) the Minister, or the Minister's security-cleared representative:

(c) the refugee and protection officer concerned, or the refugee and protection officer's security-cleared representative:

(d) the chief executive of the relevant agency, or that chief executive's security-cleared representative:

(e) the chief executive of the Department, if the proceedings relate to an application to which section 325 applies:

(f) any other person, except for person A or his or her representative, with whom it is necessary for administrative purposes for the special advocate to communicate about matters not connected with the substance of the proceedings.

(7) A special advocate who wishes to communicate with person A or his or her representative after having been given access to the classified information may submit a written communication to the Tribunal or the court (as appropriate) for approval and for forwarding to person A or his or her representative.

(8) The Tribunal or court must either—

(a) forward the communication, with or without amendment, to person A or his or her representative if the communication would not be likely to prejudice the interests referred to in section 7(3); or

(b) decline to forward the communication, and notify the special advocate of that decision.

(9) The Tribunal or court may consult the chief executive of the relevant agency before determining—

(a) whether to forward a communication, with or without amendment, to person A or his or her representative; or

(b) if it proposes to forward the communication, the nature of any amendments necessary; or

(c) whether to decline to forward the communication.

(10) The Tribunal or court may—

(a) amend a communication only if the communication would be likely to prejudice the interests referred to in section 7(3), and only to the extent necessary to ensure the communication would not be likely to prejudice those interests:

(b) decline to forward a communication only if the communication would be likely to prejudice the interests referred to in section 7(3), and it is not practicable to amend the communication to prevent such prejudice.

(11) Person A may, of his or her own volition, communicate with the special advocate on any matter in accordance with subsection (12).

(12) The communication—

(a) must be made in writing; and

(b) may be made through person A's representative.

(13) The special advocate must not reply to such a communication except—

(a) in accordance with the manner set out in subsection (7); or

(b) in order to provide a bare acknowledgement of receipt of the communication to person A or his or her representative.

268 Protection of special advocates from liability

(1) To the extent that a special advocate is acting in accordance with the requirements of this Act, he or she is not guilty of—

(a) misconduct within the meaning of section 9 of the Lawyers and Conveyancers Act 2006; or

(b) unsatisfactory conduct within the meaning of section 12 of that Act.

(2) To avoid doubt, the provisions of this Act apply despite the requirements of any practice rules made and approved under the Lawyers and Conveyancers Act 2006.

(3) No person is personally liable for any act done or omitted to be done in good faith, in his or her capacity as a special advocate, in accordance with the requirements or provisions of this Act or of any regulations made under this Act.

269 Tribunal or court may appoint counsel assisting the court

(1) The Tribunal or a court may appoint counsel assisting the court for the purposes of any proceedings before it involving classified information.

(2) Counsel assisting the court may be a special advocate but, if not, must be a person who holds an appropriate security clearance given by the chief executive of the Ministry of Justice.

(3) Subsection (1) applies regardless of whether the person concerned has appointed a special advocate or a special advocate has been made available for the person.

(4) The Tribunal or the court may provide counsel assisting the court with access to the classified information concerned as it thinks fit.

(5) Counsel assisting the court must keep confidential and must not disclose classified information, except as expressly provided under this Act.

(6) Counsel assisting the court may be removed from office by the Tribunal or a court for inability to perform the role of counsel assisting the court, neglect of duty, bankruptcy, or misconduct proved to the satisfaction of the Tribunal or the court.

270 Tribunal or court may appoint special adviser

(1) The Tribunal or a court may appoint a cultural, medical, intelligence, military, or other special adviser for the purposes of giving advice in any proceedings before it involving classified information.

(2) The special adviser must hold an appropriate security clearance given by the chief executive of the Ministry of Justice.

(3) The Tribunal or the court may provide the special adviser with access to the classified information concerned as it thinks fit.

(4) A special adviser must keep confidential and must not disclose classified information, except as expressly provided under this Act.

(5) Subsection (1) applies regardless of whether—

(a) the person concerned has appointed a special advocate or a special advocate has been made available for the person; and

(b) the Tribunal or the court has appointed counsel assisting the court for the purposes of the proceedings.

(6) A special adviser may be removed from office by the Tribunal or a court for inability to perform the role of special adviser, neglect of duty, bankruptcy, or misconduct proved to the satisfaction of the Tribunal or the court.

271 Payment to counsel assisting the court or special adviser

(1) The Tribunal or the court concerned may make the order it thinks just for payment to—

(a) counsel assisting the court appointed for any proceedings under section 269; and

(b) a special adviser appointed for any proceedings under section 270.

(2) The Registrar of the Tribunal or the court must send a copy of the order to the chief executive of the department of State referred to in clause 5 of Schedule 2, who must then make the payment out of money appropriated by Parliament for that purpose.

Part 8
Compliance and information

272 Purpose of Part

The purpose of this Part is—

(a) to confer on immigration officers the power to obtain information in order to allow the Department to—

(i) detect immigration fraud or misrepresentation:

(ii) identify persons failing to comply with immigration-related obligations, including by breaching the conditions of their visas:

(b) to confer on immigration officers powers to assist in locating persons who are or may be liable for deportation:

(c) to authorise the Department to share information with other persons and agencies, to enable—

(i) the persons and agencies to effectively administer and comply with certain legislation or to check a person's eligibility for publicly funded services; and

(ii) the Department to effectively administer this Act:

(d) to confer on constables the powers described in paragraphs (a) and (b).

273 Meaning of information, document, register, list, etc, in sections 274, 276, 277, and 278

In sections 274, 276, 277, and 278, any reference to information or a document, register, list, wages and time record, or record includes a reference to an electronic version of the information, document, register, list, wages and time record, or record.

Power to access address information

274 Certificate requiring production of address information

(1) An immigration officer may prepare a certificate in the prescribed form if the officer has good cause to suspect that—

(a) a particular person may be, or may become as a result of investigations, liable for deportation; or

(b) particular premises are being occupied or have been occupied (whether for residential purposes or otherwise) by a person who may be, or may become as a result of investigations, liable for deportation.

(2) A certificate prepared under subsection (1)(a) may, where the officer believes that the person concerned may be using 1 or more aliases, include any such alias.

(3) On being provided with a certificate prepared under subsection (1), any person referred to in section 275, or any officer or employee of any department, agency, or body referred to in that section, must produce for inspection by the officer and provide a copy of, or allow the officer to copy, any record or other information held by and reasonably available to that person, department, agency, or other body that may help to establish,—

(a) in the case of a certificate prepared under subsection (1)(a), the present whereabouts of the person named in the certificate or that person's whereabouts at any time in the past; or

(b) in the case of a certificate prepared under subsection (1)(b), the name of the present occupier or any of the present occupiers of the premises or the name of the occupier or any of the occupiers of the premises at any time in the past.

(4) Subsection (3) applies despite any enactment or rule of law to the contrary, and no person who provides a record or information in compliance with that subsection is liable in any civil or criminal proceedings in respect of that action.

Compare: 1987 No 74 s 64

275 Persons required to provide access to address information

The persons and bodies who may be required by certificate under section 274 to provide access to address or identity information are as follows:

(a) the following government agencies:

(i) New Zealand Customs Service:

(ii) Ministry of Social Development:

(iii) Ministry of Justice:

(iv) New Zealand Police:

(v) Land Transport New Zealand:

(vi) Department of Building and Housing:

(vii) Housing New Zealand Corporation:

(viii) Department of Corrections:

(ix) any government agency established in substitution for, or set up to take over any relevant function of, the departments and agencies listed in subparagraphs (i) to (viii):

(b) education providers, in relation only to enrolled students not in compulsory education:

(c) postal and courier service providers:

(d) telecommunications service providers:

(e) internet service providers:

(f) subscription television service providers:

(g) finance and banking service providers:

(h) local government and regional government bodies:

(i) insurance service providers:

(j) providers of utilities such as electricity, gas, and water:

(k) real estate agents:

(l) in relation to a person whose location is being sought, the person's employer or former employer.

Compare: 1987 No 74 s 64 and Schedule 1

Powers of entry, inspection, etc

276 Powers of entry and inspection relating to records of accommodation providers

(1) An immigration officer may exercise the powers in subsection (2) for the purposes of locating any person who is liable for deportation.

(2) Where an immigration officer believes on reasonable grounds that the information contained in any register or list kept by an accommodation provider might relate to any person who is liable for deportation, the officer may—

(a) enter any part of the premises, other than a part of the premises that is a dwellinghouse, in which the officer reasonably believes the register or list is kept; and

(b) require the accommodation provider or any person appearing to have that register or list under that person's control to produce for inspection any part of the register or list that relates to a person who is liable for deportation; and

(c) copy or require a person to provide a copy of any part of any register or list that is required to be produced to the officer.

(3) An immigration officer may exercise the powers in subsection (2) at any reasonable time during which the premises are open for business, whether by day or by night and without warrant or any other authority than this section.

(4) In this section, **accommodation provider** means the operator of any hotel, motel, guesthouse, motor camp, or other premises in which accommodation is offered for valuable consideration to any member of the public.

Compare: 1987 No 74 s 138

277 Powers of entry and inspection relating to records of employers

(1) An immigration officer may exercise the powers in subsection (3) in the circumstances described in subsection (2) for the following purposes:

(a) determining whether a person is complying with work-related conditions of his or her visa:

(b) determining whether an employer is complying with the employer's obligations (which, to avoid doubt, includes the obligation not to commit an offence) under this Act:

(c) locating a person who is liable for deportation:

(d) determining whether a person who is working for an employer in New Zealand is entitled to work in New Zealand.

(2) An immigration officer may exercise the powers in subsection (3) where the officer believes on reasonable grounds that—

(a) there is kept on any premises—

(i) any wages and time record kept by an employer in accordance with the provisions of any Act; or

(ii) any other document relating to the remuneration or employment conditions of an employee; and

(b) there may be information in that record or other document relating to a person who is—

(i) not entitled under this Act to work in New Zealand or to undertake work of the relevant type or duration or for the relevant employer; or

(ii) otherwise not complying with obligations under this Act (including obligations as an employer); or

(iii) liable for deportation.

(3) An immigration officer may—

(a) enter any part of the employer's premises in which the officer reasonably believes a wages and time record, or any other document referred to in subsection (2)(a)(ii), is kept; and

(b) require the employer or the person appearing to have the record or document under that person's control to produce that record or document for inspection; and

(c) copy or require a person to provide a copy of any part of any record or document that is required to be produced to the officer.

(4) An immigration officer may exercise the powers in subsection (3) at any reasonable time during which work is being carried out on the premises or the premises are open for business, whether by day or by night, without a warrant or any other authority than this section.

(5) In this section, **premises** includes a dwellinghouse.

Compare: 1987 No 74 s 138

Section 277(1)(b): amended, on 7 May 2015, by section 65(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 277(1)(d): inserted, on 7 May 2015, by section 65(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 277(2)(a): amended, on 7 May 2015, by section 65(3) of the Immigration Amendment Act 2015 (2015 No 48).

Section 277(5): inserted, on 7 May 2015, by section 65(4) of the Immigration Amendment Act 2015 (2015 No 48).

277A Powers of entry and search for employees on employers' premises

(1) In this section,—

premises means any premises, including a dwellinghouse and any ship or other vessel or vehicle

specified employee means a person who an immigration officer believes on reasonable grounds is or may be an employee of an employer who the immigration officer has good cause to suspect is committing an offence under section 350 or 351

specified person means a person who an immigration officer believes on reasonable grounds is or may be a person who—

(a) is not entitled under this Act to work in New Zealand; or

(b) is not complying with 1 or more work-related conditions of his or her visa.

(2) An immigration officer may, for any purpose listed in section 277(1), exercise any 1 or more of the powers in subsection (3) of this section if the officer believes on reasonable grounds that a specified person or a specified employee is at premises—

(a) that are owned, occupied, or used by an employer; and

(b) at which the officer believes on reasonable grounds that work is being done.

(3) An immigration officer may—

(a) enter any part of the premises; and

(b) search for any specified person or specified employee at the premises; and

(c) require any specified person at the premises to answer questions put by the immigration officer in order to ascertain—

(i) whether the person is entitled to work in New Zealand; and

(ii) whether the person is complying with the work-related conditions of his or her visa (if any); and

(d) require any specified person at the premises to produce for inspection—

(i) any documentary or other evidence of the person's identity; and

(ii) the person's passport or certificate of identity (whether or not it also relates to any other person); and

(e) require anyone at the premises who has access to copying facilities to provide copies of any documents or things provided under paragraph (d); and

(f) require any specified employee at the premises to answer questions put by the immigration officer in order to ascertain whether the specified employee's employer is complying with the employer's obligations under this Act.

(4) An immigration officer may retain any original documents or things produced under subsection (3)(d), and any copies provided under subsection (3)(e), and may check them against any wages and time records, or any other documents

relating to the remuneration or employment conditions of any employees, obtained by the officer under section 277(3).

(5) The powers in subsection (3) may be exercised at any reasonable time during which work is being carried out at the premises, or they are open for business, whether by day or by night, without a warrant or any other authority than this section.

(6) Any original documents or things produced under this section may be retained and used by an immigration officer until the immigration officer has determined whether the person to whom they relate is liable for deportation or turnaround, and then,—

(a) if the person is liable for deportation or turnaround, or becomes liable for deportation following the exercise of the immigration officer's powers under this section, the documents or things may be retained and used by the Crown toward effecting the person's deportation or departure from New Zealand; or

(b) if the person is not liable for deportation or turnaround, and does not become liable for deportation following the exercise of the immigration officer's powers under this section, the documents or things must be returned to the person as soon as possible.

Section 277A: inserted, on 6 May 2016, by section 66 of the Immigration Amendment Act 2015 (2015 No 48).

277B Department must review and report on entry and search powers under section 277A

(1) The Department must, not later than 3 years after the commencement of section 277A,—

(a) review the exercise by immigration officers of the entry and search powers conferred by section 277A(3)(a) and (b); and

(b) prepare a report on the review for the Minister.

(2) The report must include recommendations to the Minister on whether any amendments to the Act concerning the powers under section 277A(3)(a) or (b), or both, are necessary or desirable.

(3) As soon as practicable after receiving the report, the Minister must present a copy of the report to the House of Representatives.

Section 277B: inserted, on 6 May 2016, by section 66 of the Immigration Amendment Act 2015 (2015 No 48).

277C Departmental annual report to record exercise of entry and search powers under section 277A

(1) The chief executive must include in every annual report prepared by the chief executive for the purposes of section 43 of the Public Finance Act 1989—

(a) the number of occasions during the period covered by the report on which immigration officers exercised the powers conferred by section 277A(3)(a) or (b), or both; and

(b) the number of persons charged during the period covered by the report with an offence under section 350 or 351, if the collection of evidence relevant to the offence was significantly assisted by the exercise of the powers under section 277A(3)(a) or (b), or both.

(2) To avoid doubt, this section does not require the chief executive to include in any annual report information about an entry or a search undertaken by consent.

Section 277C: inserted, on 6 May 2016, by section 66 of the Immigration Amendment Act 2015 (2015 No 48).

278 Powers of entry and inspection relating to records of education providers

(1) An immigration officer may exercise the powers in subsection (4) in the circumstances described in subsection (2) for the following purposes:

(a) determining whether a person is complying with the study-related conditions of his or her visa:

(b) determining whether an education provider is complying with the provider's obligations under this Act:

(c) locating a person who is liable for deportation.

(2) Subject to subsection (3), an immigration officer may exercise the powers in subsection (4) where the immigration officer believes on reasonable grounds that—

(a) any information or record is held on an education provider's premises; and

(b) that information or record may relate to a person who is—

(i) not entitled under this Act to study in New Zealand, or undertake a course of study of a particular type or duration or conducted by a particular education provider; or

(ii) otherwise not complying with obligations under this Act (including obligations as an education provider); or

(iii) liable for deportation.

(3) The powers in subsection (4) may not be exercised in relation to a person undertaking compulsory education or any member of the family of such a person.

(4) An immigration officer may—

(a) enter any part of the education provider's premises in which the officer reasonably believes the information or record is held; and

(b) require the education provider or person appearing to have the information or record under that person's control to produce for inspection the information or record; and

(c) copy or require a person to provide a copy of any information or record that is required to be produced to the officer.

(5) An immigration officer may exercise the powers in subsection (4) at any reasonable time during which the education provider is open for business, whether by day or by night, without a warrant or any other authority other than this section.

Compare: 1987 No 74 s 138

Power to require production of documents, etc

279 Powers of immigration officer to require information and documents where offence suspected

(1) Where an immigration officer has good cause to suspect that a person has committed an offence against this Act, the officer may require the person to do all or any of the following things:

(a) supply the person's full name (or names, if the person is known by more than 1 name), date of birth, country of birth, nationality, and residential address:

(b) produce for inspection documentary or other evidence of the person's identity:

(c) produce any passport or certificate of identity relating or purporting to relate to the person, whether or not it also relates to any other person:

(d) produce evidence of any visa relating or purporting to relate to the person, whether or not it relates to any other person:

(e) surrender any passport, certificate of identity, or evidence of any visa produced under paragraph (c) or (d):

(f) if the person does not currently have in his or her possession any of the documents or other things referred to in paragraphs (b) to (d), give the officer details of where they can be found and who is holding them.

(2) Before acting under subsection (1), the immigration officer must—

(a) inform the person that he or she suspects that the person has committed an offence against this Act; and

(b) warn the person that if the person fails without reasonable excuse to comply with his or her request, the person may be charged with an offence against section 344(b).

Compare: 1987 No 74 s 136(1)

279A Treatment of identity documents and other things

(1) In this section and sections 280 to 281B, **identity document**, in relation to a person, means all or any of the following:

(a) documentary or other evidence of the person's identity:

(b) any passport or certificate of identity relating or purporting to relate to the person, whether or not it also relates to any other person:

(c) any passport or certificate of identity relating to a dependent child of the person (but only in circumstances where there is good cause to suspect that the child is liable for deportation or turnaround).

(2) Any identity documents or things surrendered or obtained under sections 280 to 281B may be used by the Crown toward effecting the person's deportation or departure from New Zealand.

(3) To the extent that any identity documents or things surrendered or obtained under sections 280 to 281B are not used or required for the person's deportation or departure from New Zealand, they must be returned to the person—

(a) on the person's departure from New Zealand or on the person being granted a visa and entry permission; or

(b) when the person's liability for deportation is cancelled or suspended, or ceases for any reason.

Section 279A: inserted, on 7 May 2015, by section 67 of the Immigration Amendment Act 2015 (2015 No 48).

280 Power of immigration officer to request information and documents where liability for deportation or turnaround suspected

(1) If an immigration officer has good cause to suspect that a person is liable for deportation or turnaround, the officer may, for the purpose of establishing whether that is the case, request the person to do 1 or more of the following things:

(a) supply the person's full name (or names, if the person is known by more than 1 name), date of birth, country of birth, nationality, and residential address:

(b) produce any identity documents for inspection:

(c) surrender any identity document produced under paragraph (b):

(d) if the person does not currently have in his or her possession an identity document requested by the officer, give details to the officer of where it can be found or who is holding it.

(2) Before acting under subsection (1), the immigration officer must—

(a) inform the person that he or she suspects that the person is liable for deportation or turnaround; and

(b) warn the person that if the person fails without reasonable excuse to comply with his or her request, the person is liable to arrest and detention under this Act.

Compare: 1987 No 74 s 138A(1), (2)

Section 280(1): replaced, on 7 May 2015, by section 68 of the Immigration Amendment Act 2015 (2015 No 48).

281 Power to require information from person liable for deportation or turnaround

Where a person is liable for deportation or turnaround, an immigration officer may require the person to—

(a) do any of the things in section 280(1); and

(b) produce and surrender any travel tickets, or cash or security in lieu of travel tickets, held by the person.

Section 281: replaced, on 7 May 2015, by section 69 of the Immigration Amendment Act 2015 (2015 No 48).

281A Obligation of third parties to surrender identity documents

(1) A person (**person A**) must surrender an identity document relating to another person (**person B**) to an immigration officer if—

(a) person B—

(i) has failed to produce or surrender the identity document when required to do so under section 280 or 281; or

(ii) has told an immigration officer where the identity document may be found or who is holding it; and

(b) the immigration officer has good cause to suspect that person A is in possession of the identity document; and

(c) the immigration officer gives person A a certificate in the prescribed form that requires person A to surrender the identity document.

(2) No action lies against person A in any court if, pursuant to a requirement or purported requirement under this section by an immigration officer, person A surrenders an identity document relating to person B to the immigration officer.

Section 281A: inserted, on 7 May 2015, by section 69 of the Immigration Amendment Act 2015 (2015 No 48).

281B Power of entry and search for identity documents

(1) An authorised immigration officer may, in order to facilitate the deportation or turnaround of a person, exercise the powers in subsection (2) if—

(a) the person is liable for deportation or turnaround; and

(b) the person has refused a requirement under section 281 to produce or surrender an identity document required under that section; and

(c) the immigration officer has reasonable grounds to believe that the identity document is at the place to be entered and searched; and

(d) the place proposed to be entered and searched is—

(i) the place (which may include a vehicle) where the person is currently located; or

(ii) the person's abode; or

(iii) any premises or vehicle owned by, or under the control of, the person.

(2) An immigration officer may at any reasonable time, without a warrant or any other authority than this section, do either or both of the following:

(a) enter and search a place referred to in subsection (1)(d):

(b) seize any identity document that a person has been required to produce or surrender and that is found at the place.

(3) However, an immigration officer must not exercise any power under this section until on or after the date on which section 285A (as inserted by the Immigration Amendment Act 2015) comes into force.

Section 281B: inserted, on 7 May 2015, by section 69 of the Immigration Amendment Act 2015 (2015 No 48).

Powers at border

282 Immigration officer's powers to enter immigration control area

An immigration officer may, at any time of day or night, without a warrant or any authority other than this section, enter any immigration control area or any building or craft in that area for the purposes of carrying out his or her functions under this Act.

283 Powers at border

(1) An immigration officer may exercise the powers in subsections (2), (3), and (4) if the officer believes on reasonable grounds that it is necessary for the purpose of—

(a) detecting an offence against this Act; or

(b) apprehending any person who is liable for deportation or is, or is likely to be, liable for turnaround; or

(c) processing arriving passengers, whether or not they have left the craft; or

(d) locating any stowaway; or

(e) deporting any person or facilitating the departure of persons liable for turnaround.

(2) An immigration officer may at any time, for a purpose described in subsection (1), without a warrant or any other authority than this section, do either or both of the following things:

(a) enter and search any craft that arrives in New Zealand:

(b) enter and search any land or premises in any airport or port, including any immigration control area.

(3) Without limiting the power of entry and search in subsection (2), an immigration officer may, before the disembarkation of a person from a craft,—

(a) interview the person:

(b) view the person's seating and identify those passengers seated with the person:

(c) search for the person's travel and identity documents.

(4) An immigration officer may retain any documents found in a search carried out under this section if retaining the documents is necessary for the purposes of administering this Act.

284 Power of entry and search of craft

(1) An immigration officer may exercise the powers in subsection (2) where the officer believes on reasonable grounds that there is on board any craft that is in the contiguous zone or territorial sea of New Zealand, a person who, if he or she lands in New Zealand, will—

(a) commit an offence against this Act; or

(b) be liable for deportation; or

(c) be, or be likely to be, liable for turnaround.

(2) An immigration officer may at any time, without a warrant or any other authority than this section, and by force if necessary, do the following things:

(a) enter and search any craft for the purpose of determining whether there is a person to whom subsection (1) applies on board; and

(b) if satisfied that there is a person to whom subsection (1) applies on board, exercise any power under this Act or any other Act that he or she could exercise if the craft was in New Zealand.

(3) A person is not granted a visa or entry permission and does not enter New Zealand lawfully by reason only of being brought into New Zealand—

(a) by an immigration officer who is exercising or has exercised powers referred to in subsection (2); or

(b) on board a craft permitted or required to enter New Zealand by an immigration officer who is exercising or has exercised powers referred to in subsection (2).

285 Power of entry and search at border place

(1) An immigration officer may exercise the powers in subsection (2) for the purpose of—

(a) detecting an offence against this Act; or

(b) apprehending a person who is liable for deportation or turnaround.

(2) An immigration officer may at any time for a purpose described in subsection (1), without a warrant or any other authority than this section, and by force if necessary, enter and search any border place where the officer—

(a) has good cause to suspect that an offence against this Act is likely to be, or is being, committed; or

(b) believes on reasonable grounds that a person to whom subsection (1)(b) applies is in the place.

(3) In subsection (2), **border place** means—

(a) any part of the foreshore:

(b) the shores or banks of a port, bay, harbour, lake, river, or other waters:

(c) any land or premises in a port, including a containerbase, immigration control area, wharf, or transit building:

(d) a pier or other structure attached to and extending from any shore or bank described in paragraph (b).

Section 285(2): amended, on 7 May 2015, by section 70(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 285(2)(a): replaced, on 7 May 2015, by section 70(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 285(2)(b): replaced, on 7 May 2015, by section 70(2) of the Immigration Amendment Act 2015 (2015 No 48).

285A Search of persons

(1) An immigration officer may search a person who arrives in New Zealand from another country if—

(a) the immigration officer has demanded, under section 103(1)(da), the production of the person's passport or certificate of identity and any travel tickets held by the person; and

(b) the person has failed to comply with that demand; and

(c) the immigration officer believes on reasonable grounds that the person is not a New Zealand citizen; and

(d) the immigration officer has reasonable cause to suspect that some or all of the required documents are hidden on or about the person or in any baggage under the immediate control of the person.

(2) A search under this section may include a rub-down search (as defined in the Search and Surveillance Act 2012), a search of the person, or both.

(3) If, as a result of a search under this section, the person's passport or certificate of identity or any travel tickets are found,—

(a) the documents may be retained by the immigration officer for the purpose of administering this Act (unless the person is found to be a New Zealand citizen or a person who has a visa and entry permission); and

(b) the documents must be returned to the person—

(i) if the person is granted a visa and entry permission; or

(ii) on the person's departure from New Zealand.

(4) Sections 123 to 126 and subpart 7 of Part 4 of the Search and Surveillance Act 2012 apply in respect of any immigration officer exercising a power under this section, and, if the search is a rub-down search, sections 85 to 87 of that Act also apply.

Section 285A: inserted, on 6 May 2016, by section 71 of the Immigration Amendment Act 2015 (2015 No 48).

Powers relating to deportation and turnaround

286 Powers of entry and search relating to deportation

For the purpose of serving any deportation liability notice, deportation order, or removal order, or executing a deportation order or removal order, an immigration officer may, without further authority than this section, and by force if necessary,—

(a) enter and search at any reasonable time by day or night any building or premises in which the officer believes on reasonable grounds that the person named in the notice or order is present; and

(b) serve the notice or order, or execute the deportation order or removal order.

Compare: 1987 No 74 s 137(1)

Section 286: amended, on 7 May 2015, by section 72(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 286(b): amended, on 7 May 2015, by section 72(2) of the Immigration Amendment Act 2015 (2015 No 48).

287 Special biometric information

For the purposes of sections 288 to 290A, **special biometric information** means, in relation to any person, any of the following that are or may be required in order to meet the entry or transit requirements of any country to which or through which the person is to travel:

(a) the person's palm-prints:

(b) the person's footprints:

(c) measurements of the whole person:

(d) photographs of the whole person.

Section 287: replaced, on 7 May 2015, by section 73 of the Immigration Amendment Act 2015 (2015 No 48).

288 Requirement to allow collection of biometric information and special biometric information

(1) If a person is liable for deportation or turnaround, an immigration officer may require the person to allow biometric information, special biometric information, or both to be collected from him or her.

(2) An immigration officer may require a person to allow biometric information to be collected from him or her if the immigration officer has good cause to suspect any of the following matters, and the immigration officer requires the biometric information in order to determine any of those matters:

(a) that the person is liable for deportation or turnaround:

(b) that the person is not complying with, or is materially breaching, the conditions of the person's visa:

(c) that the person is undertaking work or a course of study but is not entitled to undertake that work or study under this Act:

(d) that the person has obtained a visa under a fraudulent identity.

(3) Any biometric information or special biometric information obtained from a person under subsection (1), or under a compulsion order made under section 290 on an application under section 289(1) after this subsection comes into force, must be destroyed if the person's liability for deportation is cancelled or suspended, or if the person is granted a visa and entry permission.

Section 288: replaced, on 7 May 2015, by section 73 of the Immigration Amendment Act 2015 (2015 No 48).

289 Application for order authorising collection of biometric information

(1) An immigration officer may apply, in writing and on oath, to a District Court Judge for a compulsion order in any case where a person has refused to allow biometric information, special biometric information, or both to be collected from him or her in response to a requirement by an immigration officer under section 288(1), in which case the application must set out the following:

(a) the facts relied on to show that the person is liable for deportation or turnaround; and

(b) evidence that the person has refused to allow biometric information or special biometric information to be collected from him or her in accordance with a requirement under section 288(1); and

(c) if special biometric information was required, the facts relied on for believing that any of the things referred to in section 287 are necessary in order to meet the entry or transit requirements of any country to which or through which the person is to travel.

(2) An immigration officer may apply, in writing and on oath, to a District Court Judge for a compulsion order in any case where a person has refused to allow biometric information to be collected from him or her in response to a require-

ment by an immigration officer under section 288(2), in which case the application must set out the following:

(a) the facts relied on to show that there is good cause to suspect that any matter in section 288(2) applies to the person; and

(b) evidence that the person has refused to allow biometric information to be collected from him or her in accordance with a requirement under section 288(2); and

(c) the reasons why it is considered necessary to obtain a compulsion order in relation to the person, including the facts relied on to show that there are reasonable grounds to believe that biometric information collected from the person would tend to confirm whether or not any matter in section 288(2) applies to him or her.

(3) For the purposes of subsection (1)(a), it is sufficient if (but not essential that) an immigration officer includes a copy of a deportation liability notice or deportation order with the application.

(4) If an application is made under this section,—

(a) an immigration officer must serve a copy of the application on the respondent; and

(b) both the immigration officer and the respondent may appear and may offer evidence at the hearing of the application.

(5) In considering an application made under this section, the Judge may take into account any oral or documentary material that the Judge considers relevant, whether or not it would be otherwise admissible in a court of law.

Section 289: replaced, on 7 May 2015, by section 73 of the Immigration Amendment Act 2015 (2015 No 48).

290 Judge may authorise biometric information and special biometric information to be collected

(1) On the hearing of an application for a compulsion order, a District Court Judge may make a compulsion order requiring the respondent to allow specified biometric information, special biometric information, or both to be collected from him or her if the Judge is satisfied that,—

(a) in the case of an application relating to a refusal of a requirement under section 288(1),—

(i) the respondent is liable for deportation or turnaround; and

(ii) the respondent has refused to allow the biometric information, special biometric information, or both to be collected from him or her following a requirement under section 288(1); and

(iii) if special biometric information was required, there are reasonable grounds to believe that any of the things referred to in section 287 are necessary in order to meet the entry or transit requirements of

any country to which or through which the respondent is to travel; and

(iv) in all the circumstances, it is reasonable to make the order:

(b) in the case of an application relating to a refusal of a requirement under section 288(2),—

(i) there is good cause to suspect that any matter in section 288(2) applies to the respondent; and

(ii) there are reasonable grounds to believe that biometric information collected from the respondent would tend to confirm or disprove that any matter in section 288(2) applies to the respondent; and

(iii) the respondent has refused to allow biometric information to be collected from him or her following a requirement under section 288(2); and

(iv) in all the circumstances, it is reasonable to make the order.

(2) In considering whether to make a compulsion order, the Judge must have regard to any matter the Judge considers relevant, including—

(a) any reasons given by the respondent for opposing the making of the order; and

(b) in relation to an application under section 289(1), where special biometric information is sought, any evidence regarding the necessity of obtaining from the respondent any of the things referred to in section 287 that are required in order to meet the entry or transit requirements of any country to which or through which the person is to travel; and

(c) in relation to an application under section 289(2), any evidence regarding the importance, to the investigation of the relevant matter, of obtaining biometric information from the respondent.

(3) A person served with a compulsion order must allow the biometric information or special biometric information specified in the order to be collected from him or her.

Section 290: replaced, on 7 May 2015, by section 73 of the Immigration Amendment Act 2015 (2015 No 48).

290A Obtaining biometric information by compulsion

(1) If, after a compulsion order is served on a person, the person refuses to allow the biometric information or special biometric information specified in the order (the **required biometric information**) to be collected from him or her, a constable may—

(a) arrest the person; and

(b) remove the person to, and detain him or her in, a suitable place where the required biometric information can be collected; and

(c) collect, as soon as practicable, the required biometric information from the person, by force if necessary.

(2) If force is used under subsection (1)(c), it must be reasonable and no more than is necessary to collect the required biometric information from the person.

(3) The person must be released from detention as soon as the required biometric information has been collected, unless the person's continued detention is authorised under any other provision of this or any other Act.

Section 290A: inserted, on 7 May 2015, by section 73 of the Immigration Amendment Act 2015 (2015 No 48).

291 Further applications for compulsion order

(1) The fact that a compulsion order has previously been sought or made in respect of a matter, whether or not the previous application or order related to the same person, does not prohibit—

(a) the making of an application under section 289 for a compulsion order in respect of a matter; or

(b) a Judge from making a compulsion order in respect of a matter.

(2) Notwithstanding anything in this section, where a further application for a compulsion order is made in respect of a matter in relation to which a previous compulsion order application has been made, the Judge may refuse to make the order sought if he or she is satisfied that the further application is vexatious or an abuse of the process of the court.

Powers generally

292 Immigration officer may have assistance

For the purpose of performing his or her functions under this Part, an immigration officer may be accompanied, if he or she thinks fit, by any other employee of the Department or by a customs officer.

293 Police to have powers of immigration officers

For the purposes of this Act, a constable has all the powers of an immigration officer under sections 276 to 292 and 293A.

Section 293: amended, on 7 May 2015, by section 74 of the Immigration Amendment Act 2015 (2015 No 48).

293A Warrant to enter and search

(1) An immigration officer may apply for a search warrant to search any place or thing.

(2) The application must be made, in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012, to an issuing officer (within the meaning of section 3(1) of that Act).

(3) An issuing officer may issue a search warrant to an immigration officer if the issuing officer is satisfied that there are reasonable grounds—

(a) to suspect that any relevant offence specified in the application has been committed, is being committed, or will be committed; and

(b) to believe that the search will find evidential material in respect of the offence in or on the place or thing specified in the application.

(4) In this section, **relevant offence** means an offence against—

(a) this Act or any regulations made under it; or

(b) the former Act or any regulations made under it; or

(c) any other enactment, if the offence relates directly to matters concerning immigration.

(5) The provisions of Part 4 of the Search and Surveillance Act 2012 apply, except that sections 118 and 119 apply only if the warrant is executed (as provided for in section 293 of this Act) by a constable.

Section 293A: replaced, on 7 May 2015, by section 75 of the Immigration Amendment Act 2015 (2015 No 48).

Disclosure of information to or by other agencies, bodies, or persons

294 Information matching to identify immigration status of person sentenced to imprisonment or community-based sentence

(1) The purpose of this section is to facilitate the disclosure of information between the Department and the department of State for the time being responsible for the administration of the Corrections Act 2004 (the **responsible department**) to enable the responsible department to identify the immigration status of any person who has been sentenced to imprisonment or who has received a community-based sentence.

(2) The chief executive of the Department and the chief executive of the responsible department may, for the purposes of this section, make arrangements between them in writing for the disclosure of information under this section and, in accordance with those arrangements, the chief executive of the responsible department may supply to the chief executive of the Department any identifying information—

(a) about a person who has been sentenced to imprisonment; or

(b) if authorised by regulations made under the Corrections Act 2004, about a person who has received a community-based sentence.

(3) The chief executive of the Department may compare any information he or she receives under subsection (2) with any information held by the Department that relates to the person and, if the Department has immigration information about the person, the chief executive of the Department may, in accordance with the arrangements made under subsection (2), supply to an authorised officer the following information relating to the person:

(a) identifying information about the person; and

(b) the person's immigration status under this Act and—

(i) any changes to that status:

(ii) any action taken under this Act in respect of that person:

(iii) any proposed action to be taken under this Act in relation to that person.

(4) The chief executive of the Department and the chief executive of the responsible department may, for the purpose of this section, determine by agreement between them—

(a) the frequency with which information may be supplied; and

(b) the form in which information may be supplied; and

(c) the method by which information may be supplied.

(5) In this section,—

authorised officer means an officer, employee, or agent of the responsible department who is authorised by the chief executive of that department to receive information from the chief executive of the Department in accordance with this section

identifying information includes a person's—

(a) full name:

(b) date and place of birth:

(c) gender:

(d) unique identifying number used by the responsible department:

(e) unique identifying number used by the Department:

(f) biometric information:

(g) citizenship:

(h) alias or aliases.

Compare: 1987 No 74 s 141AC

295 Information matching to locate person in serious default of payment of fine

(1) The purpose of this section is to facilitate the exchange of information between the Department and the department of State for the time being responsible for the enforcement of fines (the **responsible department**) to enable—

(a) the responsible department to locate any person who is in serious default in the payment of any fine; and

(b) appropriate fines enforcement action to be taken against that person.

(2) For the purpose of this section, an authorised officer may supply to the chief executive of the Department any identifying information about a person who is

in serious default in the payment of a fine, and the chief executive of the Department may compare that information with any information held by the Department that relates to the person and, if the Department has immigration information about the person, the chief executive of the Department may supply to an authorised officer 1 or more of the following:

(a) the person's full name:

(b) the person's date of birth:

(c) the person's gender:

(d) the person's nationality:

(e) the person's address:

(f) the person's occupation:

(g) the expiry date of any visa granted to the person (if applicable):

(h) the date that the person is expected to return to New Zealand (if applicable).

(3) The chief executive of the Department and the chief executive of the responsible department may, for the purpose of this section, determine by agreement between them—

(a) the frequency with which information may be supplied; and

(b) the form in which information may be supplied; and

(c) the method by which information may be supplied.

(4) In this section and section 296, unless the context otherwise requires,—

amount of reparation has the same meaning as in section 79 of the Summary Proceedings Act 1957

authorised officer means an officer, employee, or agent of the responsible department who is authorised by the chief executive of that department to supply information to or receive information from the chief executive of the Department in accordance with this section

fine means—

(a) a fine within the meaning of section 79 of the Summary Proceedings Act 1957:

(b) a fine to which section 19 of the Crimes Act 1961 applies:

(c) a fine to which section 43 or 45 of the Misuse of Drugs Amendment Act 1978 applies:

(d) *[Repealed]*

(e) any amount payable under section 138A(1) of the Sentencing Act 2002

fines enforcement action includes the execution of a warrant to arrest a person in respect of the non-payment of the whole or any part of any fine

identifying information means personal information that identifies an individual, which may include the individual's passport number

serious default, in relation to a person, means that—

(a) the person owes—

(i) an amount of $1,000 (or any other lesser amount that may be fixed by the Governor-General by Order in Council) or more in relation to 1 or more unpaid fines (other than an amount of reparation); or

(ii) any amount of reparation; and

(b) a warrant to arrest the person has been issued in respect of the non-payment of the whole, or of any part, of any amount referred to in paragraph (a); and

(c) the warrant has not been withdrawn or executed.

Compare: 1987 No 74 ss 141AD, 141AE

Section 295(4) **amount of reparation**: inserted, on 13 February 2012, by section 4(3) of the Immigration Amendment Act 2011 (2011 No 39).

Section 295(4) **fine**: replaced, on 13 February 2012, by section 4(1) of the Immigration Amendment Act 2011 (2011 No 39).

Section 295(4) **fine** paragraph (d): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 295(4) **reparation**: repealed, on 13 February 2012, by section 4(2) of the Immigration Amendment Act 2011 (2011 No 39).

296 No Crown liability to third parties for fines enforcement action

(1) This section applies to the taking of any fines enforcement action against a person who is alleged to be in serious default (the **alleged defaulter**), or to the questioning of any alleged defaulter with a view to taking any fines enforcement action, immediately—

(a) after the arrival of the alleged defaulter in New Zealand; or

(b) before the departure of the alleged defaulter from New Zealand.

(2) The Crown is not liable to any person (for example, an airline operator or a passenger on an airline) for any loss or damage caused as a result of, or in connection with, the actions described in subsection (1), unless the person or persons taking those actions, or any employee of the Crown performing any function directly or indirectly connected with those actions, has not acted in good faith or has been grossly negligent.

(3) Nothing in subsection (2) applies to or affects any question of the liability of the Crown to the alleged defaulter.

Compare: 1987 No 74 s 141AF

297 Chief executive may supply information concerning specified fines defaulters to commercial carriers

(1) This section applies to the chief executive of the Department if he or she is supplied with information about a specified fines defaulter (within the meaning of section 280F(3) of the Customs and Excise Act 1996) under section 280F(1) of that Act.

(2) The chief executive of the Department may supply the information to a commercial carrier—

(a) in any form and by any method that the chief executive thinks appropriate; and

(b) in whole or in part, in the form of a code representing the information.

(3) In this section,—

commercial carrier means—

(a) the owner or operator of a craft that carries persons from New Zealand to a point outside New Zealand for commercial purposes; or

(b) the agent of a person described in paragraph (a)

specified fines defaulter has the meaning given by section 280F of the Customs and Excise Act 1996.

Compare: 1987 No 74 s 141AG

298 Information matching to verify social security benefit matters

(1) The purpose of this section is to facilitate the disclosure of information between the Department and the department of State for the time being responsible for the administration of the Social Security Act 1964 (the **responsible department**) for the purposes of verifying—

(a) the entitlement or eligibility of any person to or for any benefit; or

(b) the amount of any benefit to which any person is or was entitled or for which any person is or was eligible.

(2) The chief executive of the Department and the chief executive of the responsible department may, for the purposes of this section, make arrangements between them in writing for the disclosure of information under this section and, in accordance with those arrangements, the chief executive of the responsible department may supply to the chief executive of the Department identifying information about any person who has applied to receive, is receiving, or has received a benefit.

(3) The chief executive of the Department may—

(a) compare any information he or she receives under subsection (2) with any information held by the Department that relates to the person; and

(b) if the Department has immigration information about the person, and he or she is a person described in subsection (4), supply the information de-

scribed in subsection (5) in relation to the person to an authorised officer in accordance with the arrangements made under subsection (2).

(4) The person—

(a) is a person who the chief executive of the Department believes is unlawfully in New Zealand; or

(b) is a person on whom an immigration officer or a constable may serve a deportation order under section 175(1); or

(c) is a person who is lawfully in New Zealand, but only by virtue of being the holder of a temporary entry class visa; or

(d) is a person who has made a claim for recognition, or has been recognised, as a refugee or a protected person; or

(e) is a person who has lodged an appeal against the decision of a refugee and protection officer to decline his or her claim for recognition as a refugee or a protected person; or

(f) is a person whose appeal against the decision of a refugee and protection officer to decline his or her claim for recognition as a refugee or a protected person has been determined; or

(g) is a person who has been deported (whether under this Act or the former Act) or removed under the former Act.

(5) The information referred to in subsection (3) is as follows:

(a) the person's full name:

(b) any aliases known to be used by the person:

(c) the person's date of birth:

(d) the person's nationality:

(e) the person's address:

(f) the person's immigration status, including—

(i) the start date of any visa granted to the person; and

(ii) the expiry date of any visa granted to the person:

(g) whether the person has applied for a residence class visa and, if so, the date on which the application was made:

(h) the date on which a deportation order was served on the person (if applicable):

(i) the date of the person's deportation from New Zealand (if applicable):

(j) the date on which the person made a claim (if any) for recognition as a refugee or a protected person:

(k) the decision of a refugee and protection officer in relation to the person's claim (if any) for recognition as a refugee or a protected person and the date on which the decision was made:

(l) whether the person has lodged an appeal against a decision referred to in paragraph (k) and, if so, the date on which the appeal was lodged:

(m) the outcome of any appeal referred to in paragraph (l) and the date of the decision:

(n) if the person is a refugee or a protected person, whether he or she has applied for a visa and, if so, the type of visa applied for and the date on which the application was made.

(6) The chief executive of the Department and the chief executive of the responsible department may, for the purpose of this section, determine by agreement between them—

(a) the frequency with which information may be supplied; and

(b) the form in which information may be supplied; and

(c) the method by which information may be supplied.

(7) In this section,—

authorised officer means an officer, employee, or agent of the responsible department who is authorised by the chief executive of that department to receive information from the chief executive of the Department in accordance with this section

benefit has the same meaning as in section 3(1) of the Social Security Act 1964 but includes—

(a) a lump sum payable under any of sections 61DB, 61DC, and 61DD of that Act; and

(b) any special assistance granted out of a Crown Bank Account from money appropriated by Parliament under section 124(1)(d) of that Act

identifying information, in relation to a person, includes—

(a) the person's full name and gender:

(b) any aliases known to the responsible department to be used by the person:

(c) the person's date of birth:

(d) the person's address.

Compare: 1987 No 74 s 141A

Section 298(4)(g): amended, on 7 May 2015, by section 76 of the Immigration Amendment Act 2015 (2015 No 48).

299 Information matching to recover costs of visa holder's social security benefit from sponsor

(1) The purpose of this section is to facilitate the disclosure of information between the department of State for the time being responsible for the administration of the Social Security Act 1964 (the **responsible department**) and the Department for the purpose of enabling the Department to recover from a sponsor

(as defined in section 48 of this Act) the costs of any benefit paid to a person that are recoverable under an undertaking given by the sponsor under that section in accordance with section 55.

(2) The chief executive of the Department and the chief executive of the responsible department may, for the purposes of this section, make arrangements between them in writing for the disclosure of information under this section and, in accordance with those arrangements, the chief executive of the Department may supply to the chief executive of the responsible department identifying information about any person in respect of whom an undertaking relating to the payment of a benefit has been given under section 48 of this Act.

(3) The chief executive of the responsible department may—

(a) compare any information he or she receives under subsection (2) with any information held by the responsible department that relates to the person; and

(b) if the responsible department has information about the person, and he or she has received, or is receiving, a benefit, supply the information described in subsection (4) in relation to the person to an authorised officer in accordance with the arrangements made under subsection (2).

(4) The information is—

(a) the person's full name and gender:

(b) any aliases known to the responsible department to be used by the person:

(c) the person's date of birth:

(d) the person's address:

(e) the nature of the benefit provided to the person:

(f) the amount of the benefit provided to the person:

(g) the period during which the benefit was provided to the person:

(h) any unique identifying number used by the responsible department in relation to the person.

(5) The chief executive and the chief executive of the responsible department may, for the purpose of this section, determine by agreement between them—

(a) the frequency with which information may be supplied; and

(b) the form in which information may be supplied; and

(c) the method by which information may be supplied.

(6) In this section,—

authorised officer means an officer, employee, or agent of the Department who is authorised by the chief executive of the Department to receive information from the chief executive of the responsible department in accordance with this section

benefit has the same meaning as in section 3(1) of the Social Security Act 1964 but includes—

(a) a lump sum payable under any of sections 61DB, 61DC, and 61DD of that Act; and

(b) any special assistance granted out of a Crown Bank Account from money appropriated by Parliament under section 124(1)(d) of that Act

identifying information, in relation to a person, includes—

(a) the person's full name and gender:

(b) any aliases known to the Department to be used by the person:

(c) the person's date of birth:

(d) the person's address.

300 Information matching to determine eligibility or liability to pay for publicly funded health and disability support services

(1) The purpose of this section is to facilitate the disclosure of information between the Department and the responsible department to enable the responsible department to determine—

(a) a person's eligibility for access to publicly funded health and disability support services; or

(b) a person's liability to pay for publicly funded health and disability support services the person has received.

(2) The chief executive of the Department and the chief executive of the responsible department may, for the purposes of this section, make arrangements between them in writing for the disclosure of information under this section.

(3) In accordance with those arrangements, the chief executive of the responsible department may supply to the chief executive of the Department identifying information about—

(a) a person who seeks access to publicly funded health and disability support services; or

(b) a person for whom access is sought to publicly funded health and disability support services; or

(c) a person who has received publicly funded health and disability support services.

(4) The chief executive of the Department may compare the information he or she receives with information that the Department holds about the person.

(5) If the Department holds immigration information about the person, the chief executive of the Department may supply the information described in subsections (6) and (7) to an authorised officer in accordance with the arrangements made under subsection (2).

(6) The information is—

(a) the person's identifying information:

(b) the person's immigration status, including—

(i) the start date of any visa granted to the person:

(ii) the expiry date of any visa granted to the person:

(iii) the date on which the person was granted entry permission:

(iv) the conditions, if any, relating to the person's immigration status:

(v) any changes to the person's immigration status and the dates of the changes:

(vi) any action taken under this Act in relation to the person and the date of the action:

(c) the date or dates on which the person leaves or has left New Zealand:

(d) the start date of any permit granted to the person under the former Act:

(e) the expiry date of any permit granted to the person under the former Act:

(f) if the person was exempt from the requirement to hold a permit under the former Act, the period of the exemption.

(7) The information is also, if it is relevant to the matter to be determined by the responsible department,—

(a) the immigration status of an associated person (for example, the person's spouse, civil union partner, de facto partner, or parent), including—

(i) the start date of any visa granted to the associated person:

(ii) the expiry date of any visa granted to the associated person:

(iii) the date on which the associated person was granted entry permission:

(iv) the conditions, if any, relating to the associated person's immigration status:

(v) any changes to the associated person's immigration status and the dates of the changes:

(vi) any action taken under this Act in relation to the associated person and the date of the action:

(b) the date or dates on which the associated person leaves or has left New Zealand:

(c) the start date of any permit granted to the associated person under the former Act:

(d) the expiry date of any permit granted to the associated person under the former Act:

(e) if the associated person was exempt from the requirement to hold a permit under the former Act, the period of that exemption.

(8) The chief executive of the Department and the chief executive of the responsible department may, for the purposes of this section, determine by agreement between them—

(a) the frequency with which information may be supplied; and

(b) the form in which the information may be supplied; and

(c) the method by which the information may be supplied.

(9) In this section,—

authorised officer means an officer, employee, or agent of the responsible department who is authorised by the chief executive of the responsible department to receive information from the chief executive of the Department in accordance with this section

identifying information means information that identifies a person, such as the person's full name, date or place of birth, gender, or alias or a unique identifying number used for the person

publicly funded health and disability support services means health services and disability support services funded under the New Zealand Public Health and Disability Act 2000

responsible department means the department of State for the time being responsible for the administration of the New Zealand Public Health and Disability Act 2000.

301 Disclosure of immigration information to verify eligibility for publicly funded services

(1) The purpose of this section is to facilitate the disclosure of information by the Department to a provider of any publicly funded service to enable the service provider to determine—

(a) a person's eligibility for access to the publicly funded service; or

(b) where a person is being or has been provided with the publicly funded service, the person's liability to pay for the service provided.

(2) For the purpose of this section, an authorised officer may supply to the chief executive any identifying information about—

(a) a person who seeks access to a publicly funded service; or

(b) a person for whom access is sought to a publicly funded service; or

(c) a person who is receiving or has received a publicly funded service.

(3) If identifying information is supplied under subsection (2), the chief executive may disclose to an authorised officer, for the purpose of this section, any of the following information:

(a) identifying information about the person:

(b) the person's immigration status, including—

(i) the start date of any visa granted to the person:

(ii) the expiry date of any visa granted to the person:

(iii) the date on which the person was granted entry permission:

(iv) the conditions, if any, relating to the person's immigration status:

(v) any changes to the person's immigration status, and the dates of the changes:

(vi) any action taken under this Act in relation to the person, and the date of the action:

(c) the date or dates on which the person leaves or has left New Zealand:

(d) the start date of any permit granted to the person under the former Act:

(e) the expiry date of any permit granted to the person under the former Act:

(f) if the person was exempt from the requirement to hold a permit under the former Act, the period of that exemption:

(g) if relevant to the matter to be determined by the service provider,—

(i) the immigration status of an associated person (for example, the person's spouse, civil union partner, de facto partner, or parent), including—

(A) the start date of any visa granted to the associated person:

(B) the expiry date of any visa granted to the associated person:

(C) the date on which the associated person was granted entry permission:

(D) the conditions, if any, relating to the associated person's immigration status:

(E) any changes to the associated person's immigration status, and the dates of the changes:

(F) any action taken under this Act in relation to the associated person, and the date of the action:

(ii) the date or dates on which the associated person leaves or has left New Zealand:

(iii) the start date of any permit granted to the associated person under the former Act:

(iv) the expiry date of any permit granted to the associated person under the former Act:

(v) if the associated person was exempt from the requirement to hold a permit under the former Act, the period of that exemption.

(4) The disclosure of information under subsection (3) must be in accordance with an agreement between the chief executive and the service provider concerned that complies with subsections (5) and (6).

(5) For the purposes of subsection (4), an agreement—

(a) must be in writing; and

(b) must state criteria for the disclosure of information under it; and

(c) must state, in respect of the information to be disclosed,—

(i) the use the service provider may make of it; and

(ii) either—

(A) that the service provider must not disclose it to any other agencies, bodies, or persons; or

(B) the other agencies, bodies, or persons to which the service provider may disclose any of it, and the extent to which and conditions subject to which the service provider may do so; and

(d) may state—

(i) the form in which information may be disclosed:

(ii) the method by which information may be disclosed; and

(e) may be varied.

(6) The chief executive must consult the Privacy Commissioner before entering into or varying an agreement under this section.

(7) If the Privacy Commissioner so requires, the service provider must undertake a review of an arrangement under this section, and the way in which information is disclosed under it, and report the result to the Commissioner as soon as practicable after conducting the review.

(8) The Privacy Commissioner must not require the service provider to undertake a review under subsection (7) within 12 months of last doing so.

(9) Where the Department has obtained information about a person from a service provider under this section, the Department must not use that information for the purpose of taking adverse action against the person.

(10) The service provider must ensure that each of its annual reports includes information in relation to any agreements between the chief executive and a service provider under this section, including information about—

(a) the number of agreements; and

(b) an outline of each agreement; and

(c) the number of cases in which the accuracy of the information disclosed by the chief executive was challenged.

(11) In this section,—

authorised officer means any officer, employee, or agent of the service provider who is authorised by the service provider to supply information to, or receive information from, the chief executive under this section

identifying information means personal information that identifies an individual, which may include the person's full name, date and place of birth, gender, and any known alias

publicly funded service means a service where eligibility for access to the service or liability to pay for the service—

(a) is determined by or under a statute; and

(b) is related to, or affected by, a person's immigration status

service provider means a person, including a government agency, providing, or arranging the provision of, a publicly funded service.

302 Disclosure of information to enable Department to check identity, character, and status

(1) The purpose of this section is to facilitate the disclosure of information by a specified agency to the Department to enable the Department to—

(a) establish or verify a person's identity:

(b) check matters relating to a person's character:

(c) ascertain whether a person is an excluded person.

(2) For the purposes of this section, the chief executive of the Department may supply identifying information about the following persons to the chief executive of the specified agency:

(a) a person who holds a visa:

(b) a person to whom a visa waiver applies:

(c) a person who applies for a visa:

(d) a person who applies for entry permission:

(e) a person who is deemed to have been granted entry permission:

(f) a person who travels to New Zealand, including as a member of the crew of a craft, and does not enter New Zealand as a New Zealand citizen:

(g) a person about whom the chief executive has received and retained information under section 96 or 102 and who does not enter New Zealand as a New Zealand citizen:

(h) a person liable for turnaround or who the chief executive of the Department suspects is liable for turnaround:

(i) a person who the chief executive of the Department believes is unlawfully in New Zealand:

(j) a person who may be, or may become as a result of investigations, liable for deportation.

(3) The chief executive of the specified agency may compare the information he or she receives with information that the specified agency holds about the person.

(4) If the specified agency holds information about the person, the chief executive of the specified agency may supply the information described in subsection (5) to an authorised officer under an agreement to which subsection (6) applies.

(5) The information is—

(a) the person's identifying information:

(b) the person's previous convictions:

(c) the person's modus operandi:

(d) details of the person's known or suspected involvement in illegal activities:

(e) details of the person's known currency and other financial transactions of relevant interest, including known or suspected involvement in money laundering:

(f) intelligence analysis assessments of and reports about the person:

(g) details of communications interceptions involving the person:

(h) the person's general history known to the specified agency (which may include information about associates and networks):

(i) the person's past travel movements.

(6) The following provisions apply to an agreement:

Making

(a) it must not be made until the chief executive of the specified agency has consulted the Privacy Commissioner about it:

(b) it must be made between the chief executive of the specified agency and the chief executive of the Department:

(c) it must be in writing:

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(d) it must state the criteria for the disclosure under it of information by the specified agency to the Department:

(e) it must state the use that the Department may make of the information disclosed to it:

(f) it must—

(i) state that the Department must not disclose the information disclosed to it to any other agencies, bodies, or persons; or

(ii) state the other agencies, bodies, or persons to which the Department may disclose information disclosed to it, the extent to which the Department may disclose the information, and the conditions subject to which the Department may disclose the information:

(g) it may state the form in which the information may be disclosed:

(h) it may state the method by which the information may be disclosed:

Varying

(i) it may be varied:

(j) it must not be varied until the chief executive of the specified agency has consulted the Privacy Commissioner about the variation:

Reviews and reports

(k) it, and the arrangements for disclosure under it, must be the subject of reviews and reports to the Privacy Commissioner by the chief executive of the Department at intervals of no less than 12 months, if the Privacy Commissioner so requires.

(7) The chief executive of the Department must ensure that each annual report of the Department includes information about agreements between the chief executive of the Department and the chief executive of the specified agency under this section, including—

(a) the number of agreements; and

(b) an outline of each agreement; and

(c) the number of cases in which the accuracy of the information disclosed by the chief executive of the specified agency was challenged.

(8) In this section,—

authorised officer means an officer, employee, or agent of the Department who is authorised by the chief executive of the Department to receive information from the chief executive of the specified agency in accordance with this section

chief executive of the specified agency includes the Commissioner of Police

identifying information means a person's—

(a) full name:

(b) date and place of birth:

(c) gender:

(d) unique identifying number used by the Department:

(e) unique identifying number used by the specified agency:

(f) biometric information:

(g) alias or aliases:

(h) address:

(i) distinguishing features:

(j) details of travel documents:

(k) details of identity documents:

(l) citizenship:

(m) nationality

specified agency means—

(a) the New Zealand Police:

(b) the Ministry of Justice:

(c) the department of State responsible for the administration of the Biosecurity Act 1993:

(d) the department of State responsible for the administration of the Corrections Act 2004:

(e) the department of State responsible for the administration of the Customs and Excise Act 1996.

303 Disclosure of information to enable specified agencies to check identity and character

(1) The purpose of this section is to facilitate the disclosure of information by the Department to a specified agency to enable the specified agency to—

(a) establish or verify a person's identity:

(b) check matters relating to a person's character.

(2) For the purposes of this section, the chief executive of the specified agency may supply identifying information about the following persons to the chief executive of the Department:

(a) a person in New Zealand who the chief executive of the specified agency believes is not a New Zealand citizen:

(b) a person outside New Zealand who the chief executive of the specified agency believes—

(i) is not a New Zealand citizen; and

(ii) is intending to board a craft for the purpose of travelling to New Zealand:

(c) a person outside New Zealand who the chief executive of the specified agency believes—

(i) is not a New Zealand citizen; and

(ii) has previously travelled to New Zealand.

(3) The chief executive of the Department may compare the information he or she receives with information that the Department holds about the person.

(4) If the Department holds immigration information about the person, the chief executive of the Department may supply the information described in subsection (5) to an authorised officer under an agreement entered into in accordance with section 303C.

(5) The information is—

(a) the person's identifying information:

(b) the person's previous convictions:

(c) the person's modus operandi:

(d) details of the person's known or suspected involvement in illegal activities:

(e) details of the person's known currency and other financial transactions of relevant interest, including known or suspected involvement in money laundering:

(f) intelligence analysis assessments of and reports about the person:

(g) details of communications interceptions involving the person:

(h) the person's general history known to the Department (which may include information about associates and networks):

(i) the person's past travel movements:

(j) details of a visa held by the person.

(6) *[Repealed]*

(7) The chief executive of the specified agency must ensure that each annual report of the specified agency includes information about agreements between the chief executive of the specified agency and the chief executive of the Department under this section, including—

(a) the number of agreements; and

(b) an outline of each agreement; and

(c) the number of cases in which the accuracy of the information disclosed by the chief executive of the Department was challenged.

(8) In this section,—

authorised officer means an officer, employee, or agent of the specified agency who is authorised by the chief executive of the specified agency to receive information from the chief executive of the Department in accordance with this section

chief executive of the specified agency includes the Commissioner of Police

identifying information means a person's—

(a) full name:

(b) date and place of birth:

(c) gender:

(d) unique identifying number used by the specified agency:

(e) unique identifying number used by the Department:

(f) biometric information:

(g) alias or aliases:

(h) address:

(i) distinguishing features:

(j) details of travel documents:

(k) details of identity documents:

(l) citizenship:

(m) nationality

specified agency means—

(a) the New Zealand Police:

(b) the Ministry of Justice:

(c) the department of State responsible for the administration of the Biosecurity Act 1993:

(d) the department of State responsible for the administration of the Corrections Act 2004:

(e) the department of State responsible for the administration of the Customs and Excise Act 1996.

Section 303(4): amended, on 28 September 2017, by section 275(1) of the Intelligence and Security Act 2017 (2017 No 10).

Section 303(6): repealed, on 28 September 2017, by section 275(2) of the Intelligence and Security Act 2017 (2017 No 10).

303A Disclosure of information to specified agencies for purposes of law enforcement, counter-terrorism, and security

(1) The purpose of this section is to enable the disclosure of information by the Department to a specified agency to allow that agency a longer period of time to—

(a) identify any person of interest who is intending to board a craft for the purpose of travelling from New Zealand; and

(b) perform any of its functions, or exercise any of its powers, in relation to an identified person of interest before that person departs from New Zealand.

(2) For the purpose of this section, the chief executive of a specified agency may supply to the chief executive of the Department personal information about a person of interest.

(3) The chief executive of the Department may compare the information received under subsection (2) about a person of interest with APP information that he or she holds.

(4) If the chief executive of the Department holds APP information about the person of interest, he or she may, under an agreement entered into in accordance with section 303C,—

(a) notify the chief executive of the specified agency that the person of interest intends to board a craft for the purpose of travelling from New Zealand; and

(b) disclose to that chief executive—

(i) the APP information held by the chief executive of the Department about the person of interest; and

(ii) any other information held by the chief executive of the Department about the person's intended travel (for example, when and where the person checked in).

(5) In this section,—

APP information means advance passenger processing information that the chief executive of the Department has received under section 96(2) about persons intending to board a craft for the purpose of travelling from New Zealand

chief executive of a specified agency means the head of that specified agency

person of interest means a person of interest to the chief executive of a specified agency because the chief executive believes on reasonable grounds that the person may attempt to leave New Zealand and that the person—

(a) poses a threat or risk to the security of New Zealand or another country because the person intends to engage in, or facilitate,—

(i) a terrorist act within the meaning of section 5 of the Terrorism Suppression Act 2002; or

(ii) the proliferation of weapons of mass destruction; or

(iii) any other unlawful activity designed or likely to cause serious economic damage to New Zealand, carried out for the purpose of commercial or economic gain; or

(b) is—

(i) a person under control or supervision (as defined in section 3(1) of the Corrections Act 2004); or

(ii) on bail with an electronic monitoring condition granted under section 30B of the Bail Act 2000; or

(iii) liable to be arrested (with or without a warrant) by an employee or agent of a specified agency; or

(iv) suspected of escaping from lawful custody; or

(v) suspected of being a perpetrator or victim of an offence under section 98D of the Crimes Act 1961 (trafficking in persons); or

(vi) suspected of being involved in the unlawful movement of illegal goods; or

(vii) a person who poses a risk, for any reason, to the safety of other passengers, the crew, or craft

personal information, in relation to a person of interest, includes the following information:

(a) the person's—

(i) full name; and

(ii) date of birth; and

(iii) place of birth; and

(iv) nationality; and

(v) gender; and

(b) the details specified in the person's passport or certificate of identity, if known, including—

(i) the passport or certificate of identity number; and

(ii) the expiry date; and

(iii) the issuer of the person's certificate of identity (if any), if it is not the person's country of nationality

specified agency means—

(a) the New Zealand Police:

(b) the department of State responsible for the administration of the Corrections Act 2004:

(c) the department of State responsible for the administration of the Customs and Excise Act 1996:

(d) the Civil Aviation Authority of New Zealand established under section 72A(1) of the Civil Aviation Act 1990.

Section 303A: inserted, on 28 September 2017, by section 276 of the Intelligence and Security Act 2017 (2017 No 10).

303B Direct access to information for purposes of law enforcement, counter-terrorism, and security

(1) For the purpose of section 303A, the chief executive of the Department may allow the chief executive of a specified agency to access the APP information database or databases to search for information relating to a person of interest.

(2) Before allowing the chief executive of a specified agency access to the APP information, the chief executive of the Department must enter into an agreement with the specified agency in accordance with section 303C.

(3) The agreement must specify, in addition to the matters set out in section 303C(2)(d) to (h),—

(a) the particular information that may be accessed:

(b) the particular purpose or purposes for which the information may be accessed:

(c) the positions or designations of the persons in the specified agency who may access the database or databases:

(d) the records to be kept in relation to each occasion on which a database is accessed:

(e) the safeguards that are to be applied for protecting personal information that is accessed:

(f) the requirements relating to storage and disposal of information obtained by the specified agency from the database:

(g) the requirements for reviewing the agreement.

(4) In this section,—

access, in relation to a database, includes remote access to the database

APP information, **chief executive of a specified agency**, **specified agency**, and **person of interest** have the meanings given to them by section 303A(5)

APP information database means the database of APP information

database means any information recording system or facility used by the Department to store or process information.

Section 303B: inserted, on 28 September 2017, by section 276 of the Intelligence and Security Act 2017 (2017 No 10).

303C Requirements for agreements entered into under section 303, 303A, or 303B

(1) This section applies to an agreement entered into under section 303, 303A, or 303B.

(2) An agreement—

Making

(a) must not be made until the chief executive of the Department has consulted the Privacy Commissioner:

(b) must be made between the chief executive of the Department and the chief executive of the specified agency:

(c) must be in writing:

Contents

(d) must state the criteria for the disclosure under it of information by the Department to the specified agency:

(e) must state the use that the specified agency may make of the information disclosed to it:

(f) must—

(i) state that the specified agency must not disclose the information disclosed to it to any other agencies, bodies, or persons; or

(ii) state the other agencies, bodies, or persons to which the specified agency may disclose information disclosed to it, the extent to which the specified agency may disclose the information, and the conditions subject to which the specified agency may disclose the information:

(g) may state the form in which the information may be disclosed:

(h) may state the method by which the information may be disclosed:

Varying

(i) may be varied:

(j) must not be varied until the chief executive of the Department has consulted the Privacy Commissioner:

Reviews and reports

(k) must, if the Privacy Commissioner requires, provide that the agreement, and the arrangements for disclosure under it, be the subject of reviews and reports to the Privacy Commissioner by the chief executive of the specified agency at intervals of no less than 12 months.

Section 303C: inserted, on 28 September 2017, by section 276 of the Intelligence and Security Act 2017 (2017 No 10).

304 Disclosure of information to employers

(1) The purpose of this section is to facilitate the disclosure of information by the Department to an employer to enable the employer to verify that a person is entitled under this Act to work in the employer's service.

(2) On receipt of a request from an employer, the chief executive may, for the purpose of this section, disclose the information specified in subsection (4) to the employer.

(3) The chief executive must not disclose the information specified in subsection (4) unless satisfied that the request—

(a) has been made by an employer in New Zealand; and

(b) is for the purpose of enabling the employer to verify that a person is entitled under this Act to work in the employer's service.

(4) The information that may be disclosed under this section is as follows:

(a) whether the person is entitled to undertake that work in New Zealand:

(b) if the person is entitled to undertake that work in New Zealand,—

(i) the duration of the entitlement; and

(ii) any conditions imposed on that entitlement.

(5) Where the chief executive discloses information under this section to an employer, the employer must be informed of the requirement to comply with the Privacy Act 1993 in relation to that information.

305 Disclosure of information overseas

(1) The chief executive may disclose any information specified in section 306 to an overseas agency, body, or person whose functions include—

(a) the prevention, detection, investigation, prosecution, or punishment of immigration or other offences; or

(b) the processing of international passengers; or

(c) border security.

(2) The disclosure of information under subsection (1) must be—

(a) in accordance with an agreement between the chief executive and the agency, body, or person concerned that complies with subsections (3) and (4); or

(b) in accordance with subsection (7).

(3) The chief executive must not enter into an agreement for the purposes of subsection (2)(a) unless satisfied that it is justified to help prevent, identify, or respond to violations of New Zealand law or,—

(a) in the case of an agreement with an international agency or body, to help prevent, identify, or respond to the kinds of actions that the agency or body has a function of preventing, identifying, or responding to; or

(b) in any other case, to help prevent, identify, or respond to violations of the law of the state concerned.

(4) For the purposes of subsection (2)(a), an agreement—

(a) must be in writing; and

(b) must state criteria for the disclosure of information under it; and

(c) must state, in respect of the information to be disclosed,—

(i) the use the agency, body, or person may make of it; and

(ii) either—

(A) that the agency, body, or person must not disclose it to any other agency, body, or person; or

(B) the other agencies, bodies, or persons to which the agency, body, or person may disclose any of it, and the extent to which and conditions subject to which the agency, body, or person may do so; and

(d) may state—

(i) the form in which information may be disclosed:

(ii) the method by which information may be disclosed; and

(e) may be varied.

(5) The chief executive—

(a) must consult the Privacy Commissioner before entering into an agreement under this section, or varying such an agreement; and

(b) if the Privacy Commissioner so requires, must undertake a review of the agreement under this section, and the arrangements for disclosure under it; and

(c) as soon as practicable after conducting a review required to be undertaken under paragraph (b), must report the result to the Privacy Commissioner.

(6) The Privacy Commissioner must not require the chief executive to undertake a review of an agreement under subsection (5)(b) within 12 months of last doing so.

(7) The chief executive may disclose information to an overseas agency, body, or person if—

(a) the functions of the agency, body, or person include the prevention, detection, investigation, prosecution, or punishment of immigration or other offences; and

(b) the information is disclosed subject to conditions stating—

(i) the use the agency, body, or person may make of it; and

(ii) either—

(A) that the agency, body, or person must not disclose it to any other agency, body, or person; or

(B) the other agencies, bodies, or persons to which the agency, body, or person may disclose any of it, and the extent to which and conditions subject to which the agency, body, or person may do so; and

(c) the chief executive makes and keeps a record of—

(i) the information that was disclosed; and

(ii) the agency, body, or person to which it was disclosed; and

(iii) the conditions subject to which it was disclosed.

(8) The chief executive must not disclose any information under subsection (7) unless satisfied that it relates to a suspected violation of New Zealand law or,—

(a) in the case of disclosure to an international agency or body, to a suspected action of a kind that the agency or body has a function of preventing, identifying, or responding to:

(b) in any other case, to a suspected violation of the law of the state concerned.

Compare: 1987 No 74 s 141AA

306 Information that may be disclosed under section 305

(1) The information that may be disclosed under section 305 is—

(a) airline passenger and crew lists:

(b) craft movements (which may include passenger and crew lists):

(c) past travel movements of specified people:

(d) previous convictions of specified people:

(e) general history of specified people (which may include associates and networks):

(f) modus operandi of specified people:

(g) known currency and other financial transactions of relevant interest, including involvement in money laundering:

(h) intelligence analysis assessments and reports:

(i) details of communications interceptions:

(j) personal identification details (which may include photographs, biometric information, distinguishing features, and details of identity or travel documents):

(k) names and details of immigration personnel and transport personnel:

(l) details of known or suspected involvement of people in illicit activities:

(m) details of any visa held by a person.

(2) Section 305 does not prevent or limit any disclosure of information otherwise than under that section that may be required or authorised by or under law, or any treaty, agreement, or arrangement concluded by the Government of New Zealand.

Compare: 1987 No 74 s 141AB

Part 9
Detention and monitoring

307 Purpose of Part

(1) The purpose of this Part is to establish a tiered detention and monitoring regime in order to ensure—

(a) the integrity of the immigration system through providing for the management of persons who are liable for deportation or turnaround; and

(b) the safety and security of New Zealand where a person who is liable for deportation may constitute or be suspected of constituting a threat or risk to security.

(2) The purposes of the warrant of commitment regime for members of a mass arrival group under this Part are—

(a) to provide a practicable and administratively workable time period within which arrival processing of the mass arrival group can be completed; and

(b) to provide a practicable and administratively workable time period within which any threat or risk to security or to the public arising from, or that may arise from, the members of the mass arrival group, whether collectively or individually, may be properly assessed; and

(c) to avoid disrupting the efficient functioning of the Department, the courts, or any prison or premises identified in a relevant warrant of commitment.

Section 307(2): inserted, on 19 June 2013, by section 11 of the Immigration Amendment Act 2013 (2013 No 39).

308 This Part code for detention and monitoring of person if detention and monitoring under this Act

This Part must be treated as a code for the purposes of the detention and monitoring of any person if the reason for the detention or monitoring arises under this Act, and no person who is liable for arrest and detention under this Act may be granted bail from that detention.

Arrest and detention

309 Persons liable to arrest and detention

(1) The following persons are liable to arrest and detention under this Part:

(a) persons who are liable for turnaround:

(b) persons who are liable for deportation (including persons recognised as refugees or protected persons but whose deportation is not prohibited under section 164(3) or (4)):

(c) persons who are suspected by an immigration officer or a constable to be liable for deportation or turnaround and who fail to supply satisfactory evidence of their identity when requested under section 280:

(d) persons who are, on reasonable grounds, suspected by an immigration officer or a constable of constituting a threat or risk to security.

(2) The following persons are not liable to arrest and detention under this Part:

(a) persons who are recognised as refugees, except those whose deportation is not prohibited under section 164(3):

(b) persons who are recognised as protected persons, except those whose deportation is not prohibited under section 164(4).

310 Purpose for which arrest and detention powers may be exercised

The powers of arrest and detention under this Part may be exercised for the following purposes:

(a) in the case of a person liable for turnaround, to detain the person in order to place him or her on the first available craft leaving New Zealand:

(b) in the case of a person liable for deportation,—

(i) to detain the person pending the making of a deportation order, including during the completion of any appeal brought by the person against his or her liability for deportation; or

(ii) to deport the person following the making of a deportation order by placing him or her on the first available craft leaving New Zealand:

(c) in the case of a person who is suspected by an immigration officer or a constable to be liable for deportation or turnaround and who fails to supply satisfactory evidence of his or her identity when requested under section 280, to detain the person pending satisfactory establishment of the person's identity:

(d) in the case of a person—

(i) who is suspected of constituting a threat or risk to security, to detain the person pending the making of a deportation order; or

(ii) who is subject to a deportation order under section 163, to deport the person by placing him or her on the first available craft leaving New Zealand:

(e) in the case of a person who has breached residence and reporting requirements agreed under section 315 or conditions imposed under section 320, to detain the person pending a determination by a District Court Judge under section 317, 318, or 320.

311 Implications of liability to arrest and detention

Where a person is liable to arrest and detention under this Part,—

(a) the person may be subject to the 4-hour limited detention by an immigration officer provided for in section 312:

(b) the person may be arrested and detained without warrant for a period not exceeding 96 hours by a constable in accordance with section 313:

(c) an immigration officer may agree to residence and reporting requirements with the person in accordance with section 315:

(d) the person may be detained in custody under a warrant of commitment:

(e) the person may be released on conditions under section 320.

Section 311(d): amended, on 19 June 2013, by section 17 of the Immigration Amendment Act 2013 (2013 No 39).

312 Limited power of detention for up to 4 hours

A person liable to arrest and detention under this Part may be detained by an immigration officer for a purpose set out in section 310 until the earliest of—

(a) the exercise by a constable of the power of arrest and detention under section 313; or

(b) the delivery of the person into custody under this Act; or

(c) the person no longer being liable to arrest and detention under this Part; or

(d) the purpose of the detention being achieved; or

(e) the elapsing of 4 hours since the detention commenced.

Compare: 2004 No 50 s 103

313 Initial period of detention for up to 96 hours without warrant

(1) Where a person is liable to arrest and detention under this Part, a constable may, and if requested by an immigration officer must, for a purpose set out in section 310 arrest the person without warrant and place him or her in custody.

(2) A person arrested and detained under this section may be detained only as long as is necessary to achieve the purpose of the arrest and detention without further authority than this section, but must not be detained for a period longer than 96 hours.

(3) The period of 96 hours in subsection (2) is to be determined inclusive of any time during which the person was detained by an immigration officer under section 312.

314 Persons arrested and detained pending making of deportation order

(1) This section applies in the case of a person arrested and detained under section 313 on the suspicion of an immigration officer or a constable that the person constitutes a threat or risk to security.

(2) If subsection (1) applies, a constable must as soon as is practicable refer the case to the Minister to determine whether to certify, under section 163, that the person constitutes a threat or risk to security.

Compare: 1987 No 74 s 75

315 Person may instead agree to residence and reporting requirements

(1) Rather than causing a person who is liable for arrest and detention to be arrested under section 313, or making an application for a warrant of commitment under section 316, an immigration officer and the person liable for arrest and detention may agree that the person will do all or any of the following things:

(a) reside at a specified place:

(b) report to a specified place at specified periods or times in a specified manner:

(c) provide a guarantor who is responsible for—

(i) ensuring the person complies with any requirements agreed under this section; and

(ii) reporting any failure by the person to comply with those requirements:

(d) if the person is a claimant, attend any required interview with a refugee and protection officer or hearing with the Tribunal:

(e) undertake any other action for the purpose of facilitating the person's deportation or departure from New Zealand.

(2) A decision as to whether to offer or agree residence and reporting requirements under subsection (1) is a matter for the absolute discretion of an immigration officer.

(3) An immigration officer may at any time vary any residence or reporting requirements under this section at the request or with the agreement of the person.

(4) The agreement or variation of any residence or reporting requirements must be in writing and must—

(a) list any requirements agreed under subsection (1) or (3); and

(b) include a warning that, if the person fails to comply with any agreed requirement, the person may be detained under section 312 or arrested and detained under section 313.

(5) An immigration officer may at any time, in the officer's absolute discretion, decide to end any agreement made under subsection (1).

(6) A person may be detained under section 312 or arrested and detained under section 313—

(a) if an immigration officer determines that the person, without reasonable excuse,—

(i) has failed to reside at the specified place; or

(ii) has failed to comply with other agreed requirements; or

(b) if an immigration officer ends an agreement under subsection (5); or

(c) in order to execute a deportation order or place the person on the first available craft leaving New Zealand.

(7) An agreement under this section lapses and the person ceases to be bound by it when the person leaves New Zealand or otherwise ceases to be liable to arrest and detention under this Part.

Compare: 1987 No 74 s 98

Warrants of commitment

316 Application for warrant of commitment

(1) An immigration officer may apply to a District Court Judge for a warrant of commitment (or a further warrant of commitment) authorising a person's detention for up to 28 days in any case where it becomes apparent, in the case of a person detained in custody under this Part, that before the expiry of the period for which detention is authorised—

(a) there will not be, or there is unlikely to be, a craft available to take the person from New Zealand; or

(b) the person will not, or is unlikely to, supply satisfactory evidence of his or her identity; or

(c) the Minister has not made, or is not likely to make, a decision as to whether to certify that the person constitutes a threat or risk to security; or

(d) for any other reason, the person is unable to leave New Zealand.

(2) Every application under this section—

(a) must be made on oath; and

(b) must include a statement of the reasons why the person should be the subject of a warrant of commitment; and

(c) may include any other supporting evidence.

(3) The Judge must determine the application under section 317, 318, or 323, as appropriate.

Compare: 1987 No 74 s 128(8)

317 Decision on application for warrant of commitment

(1) On an application for a warrant of commitment, a District Court Judge—

(a) must, if satisfied on the balance of probabilities that the person is not the person named in the application for the warrant of commitment, order that the person be released from custody immediately:

(b) may, in any other case, either—

(i) issue a warrant of commitment in the prescribed form authorising the person's detention, in a place named in the warrant, for a period of up to 28 days, if satisfied of the matters in subsections (2) and (3) (and having taken into account the matters in subsections (4) and (5)); or

(ii) order the person's release from custody on conditions under section 320, if the Judge is not satisfied that detention is warranted.

(2) A Judge may issue a warrant of commitment if satisfied on the balance of probabilities that the person in custody is the person named in the application and that any 1 or more of the following applies:

(a) a craft is likely to be available, within the proposed period of the warrant of commitment, to take the person from New Zealand:

(b) the reasons why a craft was not available to take the person from New Zealand are continuing and are likely to continue, but not for an unreasonable period:

(c) the other reasons the person was not able to leave New Zealand are still in existence and are likely to remain in existence, but not for an unreasonable period:

(d) the person has not supplied satisfactory evidence of his or her identity.

(3) If subsection (2) does not apply, the Judge may, nevertheless, make a warrant of commitment if it is, in all the circumstances, in the public interest to do so.

(4) In determining whether to issue a warrant of commitment, or whether to order the person's release on conditions, the Judge must have regard to, among other things, the need to seek an outcome that maximises compliance with this Act.

(5) Unless there are exceptional circumstances, the Judge must not release the person on conditions if—

(a) the identity of the person is unknown; or

(b) the person's identity has not been established to the satisfaction of the court; or

(c) a direct or indirect reason for the person being unable to leave New Zealand is, or was, some action or inaction by the person occurring after the person was—

(i) served with a deportation liability notice; or

(ii) arrested and detained for the purpose of deportation or turnaround; or

(d) the person claimed refugee or protection status only after the person was—

(i) served with a deportation liability notice or deportation order or with a removal order under the former Act; or

(ii) arrested and detained for the purposes of deportation or turnaround.

Compare: 1987 No 74 s 60

Section 317(5)(d)(i): amended, on 7 May 2015, by section 77 of the Immigration Amendment Act 2015 (2015 No 48).

317A Application for mass arrival warrant

(1) An immigration officer may apply to a District Court Judge for a warrant of commitment authorising the detention, for a period of not more than 6 months, of the members of a mass arrival group (a **mass arrival warrant**) if—

(a) the warrant is necessary—

(i) to effectively manage the mass arrival group; or

(ii) to manage any threat or risk to security or to the public arising from, or that may arise from, 1 or more members of the mass arrival group; or

(iii) to uphold the integrity or efficiency of the immigration system; or

(iv) to avoid disrupting the efficient functioning of the District Court, including the warrant of commitment application procedure; and

(b) the members of the mass arrival group are detained in custody under this Part; and

(c) it becomes apparent that, before the expiry of the period for which detention is authorised, 1 or more of the circumstances described in para-

graphs (a) to (d) of section 316(1) will apply to each member of the mass arrival group.

(2) Every application under this section must—

(a) be made on oath; and

(b) include—

(i) the number of persons to whom the warrant is to apply; and

(ii) identity information in respect of each of the persons; and

(iii) particulars of the craft, or of each of the group of craft, on which the persons arrived (if known); and

(iv) a description of the circumstances in which the craft, or the group of craft, arrived; and

(c) include a statement of—

(i) why the warrant is necessary in terms of subsection (1)(a); and

(ii) how subsection (1)(c) relates to each person to whom the warrant is to apply.

(3) An application under this section may, but is not required to, include any other supporting evidence or information relating to the members of the mass arrival group.

(4) The Judge must determine an application under section 317B.

(5) Nothing in this section permits an immigration officer to include a person under 18 years of age in an application for a mass arrival warrant unless the person has a parent, guardian, or relative who is a member of the mass arrival group.

(6) In subsection (2)(b)(ii), **identity information** means 1 or more of the following:

(a) a name of the person (which may be the name that the person is known by or a name assigned to the person):

(b) biometric information in relation to the person:

(c) a physical description of the person.

Section 317A: inserted, on 19 June 2013, by section 12 of the Immigration Amendment Act 2013 (2013 No 39).

317B Decision on application for mass arrival warrant

(1) On an application for a mass arrival warrant under section 317A, a District Court Judge must,—

(a) if satisfied of the matters in subsection (2), grant the application and act under subsection (3); or

(b) if not satisfied of the matters in subsection (2), refuse the application and act under subsection (4).

(2) The matters are that—

(a) the application relates to a mass arrival group; and

(b) the warrant is necessary for 1 or more of the reasons stated in section 317A(1)(a); and

(c) 1 or more of the circumstances described in paragraphs (a) to (d) of section 316(1) will apply in respect of each member of the mass arrival group; and

(d) the requirements of section 317A(2)(a) to (c) have been met.

(3) The Judge must issue the warrant in the prescribed form authorising the detention of each member of the mass arrival group in a place or the places named in the warrant—

(a) for the period sought in the application; or

(b) for a specified shorter period, if he or she is satisfied that, after the expiry of the shorter period,—

(i) the reasons for the necessity of the warrant in terms of section 317A(1)(a) will no longer apply; or

(ii) the circumstances described in paragraphs (a) to (d) of section 316(1) will no longer apply in respect of each member of the mass arrival group.

(4) The Judge must—

(a) treat the application as if it were applications made under section 316 in respect of each member of the mass arrival group; and

(b) determine the applications in accordance with subsection (3) of that section.

Section 317B: inserted, on 19 June 2013, by section 12 of the Immigration Amendment Act 2013 (2013 No 39).

317C Variation of mass arrival warrant

(1) If a mass arrival warrant is issued under section 317B, an immigration officer may subsequently apply for a variation of the warrant to include 1 or more persons who are members of the mass arrival group but who were not known to the immigration officer who made the application under section 317A at the time the application was made.

(2) Every application under this section must—

(a) be made on oath; and

(b) include—

(i) a copy of the original application and warrant; and

(ii) identity information (within the meaning of section 317A(6)) in respect of each person to be included in the warrant; and

(iii) a statement of how section 317A(1)(c) relates to each person to be included in the warrant.

(3) On an application under this section, a District Court Judge must,—

(a) if satisfied of the matters in subsection (4), grant the application and act under subsection (5); or

(b) if not satisfied of the matters in subsection (4), refuse the application and act under subsection (6).

(4) The matters are that—

(a) the persons are members of the mass arrival group; and

(b) 1 or more of the circumstances described in paragraphs (a) to (d) of section 316(1) will apply in respect of each of those persons; and

(c) the requirements of subsection (2) have been met.

(5) The Judge must vary the existing warrant to include the persons specified in the application, but must not extend the period of the warrant.

(6) The Judge must—

(a) treat the application as if it were applications made under section 316 in respect of each person the immigration officer has sought to be included in the mass arrival warrant; and

(b) determine the applications in accordance with subsection (3) of that section.

(7) Nothing in this section permits an immigration officer to include a person under 18 years of age in an application for a variation of a mass arrival warrant unless the person has a parent, guardian, or relative who is a member of the mass arrival group.

Section 317C: inserted, on 19 June 2013, by section 12 of the Immigration Amendment Act 2013 (2013 No 39).

317D District Court may impose reporting requirements

(1) When issuing a mass arrival warrant under section 317B or varying a mass arrival warrant under section 317C, a District Court Judge may order an immigration officer to report to the court, on a day or days determined by the Judge, but no more than once every 28 days for the duration of the warrant, on the continuing applicability of the reasons for the necessity of the warrant in terms of section 317A(1)(a).

(2) A District Court Judge may shorten the period of a mass arrival warrant or a varied mass arrival warrant, and vary the warrant accordingly, if, after receiving a report, he or she is satisfied that those reasons will no longer apply after the expiry of the shortened period.

Section 317D: inserted, on 19 June 2013, by section 12 of the Immigration Amendment Act 2013 (2013 No 39).

317E Application for further warrant of commitment in respect of mass arrival group

(1) An immigration officer may apply to a District Court Judge for a further warrant of commitment authorising the continued detention of—

(a) all or specified members of a mass arrival group, as members of a mass arrival group; or

(b) 1 or more members of a mass arrival group as individuals.

(2) An application for a further warrant of commitment under subsection (1)(a) may be for a period of not more than 28 days and must—

(a) comply with section 317A(2), and that section applies with any necessary modifications; and

(b) be determined by a District Court Judge in accordance with section 317B, and that section applies with any necessary modifications.

(3) An application for a further warrant of commitment under subsection (1)(b) must be made under section 316 and determined by a District Court Judge in accordance with subsection (3) of that section.

(4) If a member of a mass arrival group is dealt with under subsection (3),—

(a) he or she—

(i) is no longer to be treated as a member of a mass arrival group for the purposes of this Act; and

(ii) must, from the time of the Judge's determination, be dealt with under this Act as any other individual would be; and

(b) the Judge must consequentially amend the warrant of commitment relating to the mass arrival group to exclude the member from the warrant.

(5) Subsection (4)(a) is for the avoidance of doubt.

Section 317E: inserted, on 19 June 2013, by section 12 of the Immigration Amendment Act 2013 (2013 No 39).

318 Decision on application for warrant if threat or risk to security

(1) This section applies where an immigration officer applies for a warrant of commitment to authorise the detention of a person—

(a) who was arrested and detained under section 313 on the suspicion of an immigration officer or a constable that the person constitutes a threat or risk to security; or

(b) whose deportation has been ordered under section 163.

(2) A District Court Judge must, if satisfied on the balance of probabilities that the person is not the person named in the application for the warrant of commitment, order that the person be released from custody immediately.

(3) Except where subsection (2) applies, the Judge must—

(a) issue a warrant of commitment in the prescribed form authorising the person's detention, in a place named in the warrant, for a period of up to 28 days; or

(b) if satisfied that the release of the person would not be contrary to the public interest, order that the person be released on conditions under section 320 pending the person's deportation from New Zealand.

319 Warrant of commitment

(1) A warrant of commitment authorises the manager of the prison or the person in charge of the premises identified in the warrant to detain the person to whom the warrant relates until the earliest of the following:

(a) in the case of a person liable for turnaround, the person is delivered into the custody of an immigration officer and detained, or into the custody of a constable and arrested and detained, for the purpose of placing the person on the first available craft to leave New Zealand:

(b) in the case of a person liable for deportation, the person is delivered into the custody of an immigration officer and detained, or into the custody of a constable and arrested and detained, for the purpose of executing the deportation order:

(c) written notification is received from an immigration officer that the person has ceased to be liable to arrest and detention under this Part:

(d) a Judge orders the release of the person:

(e) the warrant of commitment expires.

(2) The period for which detention is authorised by a warrant of commitment must be calculated exclusive of any period commencing on the date on which the person to whom the warrant relates escapes from lawful custody and ending 96 hours after the date on which the person is again taken into custody under this Act.

Compare: 1987 No 74 s 128

320 Court may instead release person on conditions

(1) Where a District Court Judge orders a person's release under section 317(1)(b)(ii), 318(3)(b), 323(3), or 324A(6)(b) on conditions, the conditions imposed on release may be any conditions that the Judge thinks fit to impose in the circumstances, including all or any of the following:

(a) a condition that the released person must reside at a specified place:

(b) a condition that the released person must report to a specified place at specified periods or times in a specified manner:

(c) if the person is a claimant, a condition that the released person must attend any required interview with a refugee and protection officer or hearing with the Tribunal:

(d) a condition that the released person provide a guarantor who is responsible for—

(i) ensuring compliance with any conditions imposed under this section; and

(ii) reporting any failure to comply with those conditions:

(e) a condition that the person take a specified action for the purpose of facilitating the person's deportation or departure from New Zealand.

(2) Where conditions are imposed on a released person under subsection (1),—

(a) the conditions must be notified in writing to the person before his or her release, and take effect on release; and

(b) the notice of conditions must include a warning that, if the person fails to comply with any condition, the person may be detained under section 312 or arrested and detained under section 313.

(3) Conditions imposed under this section may be varied at any time—

(a) by a District Court Judge on the application of the person released or an immigration officer under section 324:

(b) by consent between the released person and an immigration officer, if—

(i) the conditions imposed relate to the matters described in subsection (1)(a) or (b); or

(ii) the order imposing the conditions allows the variation.

(4) A variation of a condition under subsection (3)—

(a) takes effect immediately; but

(b) must be put in writing, and notified to the released person, as soon as practicable.

(5) A person may be detained under section 312 or arrested and detained under section 313—

(a) if an immigration officer determines that the person, without reasonable excuse, has failed to comply with any conditions imposed under subsection (1) or varied under subsection (3); or

(b) if an immigration officer makes an application under section 324(2) for an order that the person be detained under a warrant of commitment; or

(c) to execute a deportation order or place the person on the first available craft leaving New Zealand.

(6) Conditions imposed under this section lapse, and the person ceases to be bound by them, when the person leaves New Zealand or otherwise ceases to be liable to arrest and detention under this Part.

Compare: 1987 No 74 ss 79, 128AB

Section 320(1): amended, on 19 June 2013, by section 17 of the Immigration Amendment Act 2013 (2013 No 39).

321 Special conditions where threat or risk to security

Where a District Court Judge determines to order the release of a person to whom section 318 applies on conditions in accordance with subsection (3)(b) of that section, the conditions imposed under section 320 may also include 1 or both of the following:

(a) a condition that the person not have access to or use specified communication devices or facilities (such as a telephone, the Internet, or email):

(b) a condition that the person refrain from associating with any 1 or more named individuals, or individuals associated with 1 or more named organisations.

322 Persons detained under warrant of commitment or released on conditions pending making of deportation order

(1) This section applies in the case of a person who was arrested and detained on the suspicion of an immigration officer or a constable that the person constitutes a threat or risk to security and who—

(a) is being detained pursuant to a warrant of commitment; or

(b) has been released on conditions under section 320.

(2) If the Minister decides not to certify that a person to whom this section applies constitutes a threat or risk to security, or fails to make a certification not later than 14 days after the initial arrest under section 313,—

(a) the person ceases to be liable to arrest and detention under this Part; and

(b) in the case of a person being detained under a warrant of commitment, an immigration officer must notify that fact in writing to the manager or other person in charge of the prison or premises identified in the warrant.

Compare: 1987 No 74 s 79

Section 322(1)(a): amended, on 19 June 2013, by section 17 of the Immigration Amendment Act 2013 (2013 No 39).

323 Decisions on warrants of commitment where detention beyond 6 months

(1) This section applies where a person would, upon a successful application for a further warrant of commitment under section 316, be detained under consecutive warrants of commitment for a continuous period of more than 6 months following—

(a) the person's initial detention under a warrant of commitment, where the person has exhausted all appeal rights under this Act at the time of that initial detention, or had no such appeal rights; or

(b) where paragraph (a) does not apply, the later of—

(i) the conclusion of any appeal proceedings brought by the person; or

(ii) the expiry of any period for bringing such an appeal; or

(c) the date when a claim for recognition as a refugee or a protected person is finally determined (within the meaning of section 128), if the claim was made only after the person—

(i) was served with a deportation liability notice or order; or

(ii) was arrested and detained for the purpose of deportation or turnaround.

(2) A further warrant of commitment authorising the detention of a person to whom this section applies must be issued if a District Court Judge is satisfied—

(a) that the person's deportation or departure is prevented by some action or inaction of the person; and

(b) that no exceptional circumstances exist that would warrant release.

(3) If the Judge is not so satisfied, the Judge must order the person's release on conditions under section 320.

(4) An application for a further warrant of commitment in a case to which this section applies—

(a) must be supported by evidence under oath by an immigration officer; and

(b) must include a statement as to why the further warrant is required; and

(c) may include any other supporting evidence.

(5) The Judge may require the immigration officer to attend the hearing to give evidence and be subject to cross-examination.

(6) The period of 6 months referred to in subsection (1) must be calculated exclusive of any period commencing on the date on which the person to whom the warrant relates escapes from lawful custody and ending 96 hours after the date on which the person is again taken into custody under this Act.

(7) This section does not apply to a person whose deportation has been ordered under section 163.

(8) To avoid doubt, if a person to whom subsection (1)(c) applies makes a subsequent claim, the 6-month period must be treated as starting on the date the subsequent claim is finally determined.

(9) In subsection (1),—

appeal proceedings means the proceedings in respect of which the appeal rights are exercised

appeal rights means—

(a) the rights of appeal the person has or had against liability for deportation; and

(b) the refugee and protection appeals associated with any claim made before the person was served with a deportation liability notice or arrested and detained for the purpose of deportation or turnaround.

(10) For the purposes of subsection (2), **exceptional circumstances** do not include—

(a) the period of time that a person has already been detained under this Part; or

(b) the possibility that the person's deportation or departure may continue to be prevented by some action or inaction of the person.

Compare: 1987 No 74 s 60(6)(b)

324 Review of warrant of commitment or release on conditions

(1AA) In this section, **warrant of commitment** does not include—

(a) a mass arrival warrant issued under section 317B (in respect of all or specified members of a mass arrival group); or

(b) a further warrant of commitment issued under section 317E(1)(a) (in respect of all or specified members of a mass arrival group).

(1) At any stage during the currency of a warrant of commitment an immigration officer may apply to a District Court Judge for—

(a) a variation of the warrant of commitment; or

(b) an order that the person who is detained under the warrant be released on conditions under section 320; or

(c) an order that the person be released from custody.

(2) At any stage when a person is released on conditions under section 320 an immigration officer may apply to a District Court Judge for—

(a) an order that the person who is released on conditions be detained under a warrant of commitment; or

(b) a variation of conditions.

(3) Subject to subsection (5), a person detained under a warrant of commitment may apply to a District Court Judge for—

(a) a variation of the warrant of commitment; or

(b) an order that the person be released on conditions under section 320.

(4) Subject to subsection (5), a person released on conditions may apply to a District Court Judge seeking a variation of those conditions.

(5) An application under subsection (3) or (4) must be made with the leave of a District Court Judge, which may be granted only if the Judge is satisfied that new information has become available that—

(a) is material to the person's ongoing detention or release on conditions; and

(b) was unavailable at the time the warrant of commitment or the decision to release on conditions was made.

(6) An application for a review of a warrant of commitment or release on conditions must be considered having regard to section 317, 318, or 323, as appropriate.

Section 324(1AA): inserted, on 19 June 2013, by section 13(1) of the Immigration Amendment Act 2013 (2013 No 39).

Section 324(6): amended, on 19 June 2013, by section 13(2) of the Immigration Amendment Act 2013 (2013 No 39).

324A Review of mass arrival warrant

(1) In this section, **warrant of commitment** means—

(a) a mass arrival warrant issued under section 317B (in respect of all or specified members of a mass arrival group); and

(b) a further warrant of commitment issued under section 317E(1)(a) (in respect of all or specified members of a mass arrival group).

(2) At any stage during the currency of a warrant of commitment, an immigration officer may apply to a District Court Judge for a variation of the warrant for either or both of the following reasons:

(a) to shorten the period that the warrant applies:

(b) to provide for 1 or more persons detained under the warrant to be detained in a place or places other than the place or places currently specified in the warrant for those persons.

(3) An application made under subsection (2) must—

(a) be made on oath; and

(b) include—

(i) a copy of the warrant to be varied; and

(ii) a statement of the reasons for the application.

(4) On an application under subsection (2)(a), a District Court Judge must vary the period of the warrant of commitment—

(a) to the period sought in the application; or

(b) to a specified shorter period, if he or she is satisfied that, after the expiry of the shorter period,—

(i) the reasons for the necessity of the warrant in terms of section 317A(1)(a) will no longer apply; or

(ii) the circumstances described in paragraphs (a) to (d) of section 316(1) will no longer apply in respect of each person subject to the varied warrant.

(5) On an application under subsection (2)(b), a District Court Judge may vary the warrant of commitment, but only to authorise the detention of the persons in a

place or places other than the place or places currently specified in the warrant for those persons.

(6) At any stage during the currency of a warrant of commitment, an immigration officer may, in respect of a particular individual detained under the warrant, apply to a District Court Judge for—

(a) a warrant of commitment for the individual as an individual; or

(b) an order that the individual be released on conditions under section 320; or

(c) an order that the individual be released.

(7) An application for a warrant of commitment under subsection (6)(a) must be made under section 316 and determined by a District Court Judge in accordance with subsection (3) of that section.

(8) An application for release on conditions under subsection (6)(b) must be considered having regard to section 317, 318, or 323, as appropriate.

(9) If a member of a mass arrival group is dealt with under subsection (6),—

(a) he or she—

(i) is no longer to be treated as a member of a mass arrival group for the purposes of this Act; and

(ii) must, from the time of the Judge's determination, be dealt with under this Act as any other individual would be; and

(b) the Judge must consequentially amend the warrant of commitment relating to the mass arrival group to exclude the member from the warrant.

(10) Subsection (9)(a) is for the avoidance of doubt.

Section 324A: inserted, on 19 June 2013, by section 14 of the Immigration Amendment Act 2013 (2013 No 39).

Applications under this Part involving classified information

325 Consideration by High Court of application involving classified information

(1) This section and section 326 apply to an application made under section 316 or 324(1), (2), (3), or (4), if the application is made in respect of a person subject to a decision made, or proposed to be made, relying on classified information.

(2) In such a case—

(a) the application, or the response to an application for review made by the person subject to the decision, must be made by the chief executive and not by an immigration officer; and

(b) the District Court Judge must not be provided with access to any classified information.

(3) If the District Court Judge considering the application considers that it is necessary to access classified information in order to make a decision in relation to an application under section 316 or 324, the Judge must immediately transfer the application to the High Court for consideration by a nominated Judge (as defined in section 252(2)).

(4) If the chief executive considers that it will be necessary for a Judge to access classified information in order to make a decision in relation to an application under section 316 or 324, the chief executive may make the application directly to the High Court for consideration by a nominated Judge.

(5) If this section applies, the person may continue to be detained—

(a) without warrant under section 313, until a determination is made on the application, as long as the application for a warrant of commitment is made not later than 96 hours after the person's arrest and detention (inclusive of any time during which the person was detained by an immigration officer under section 312); or

(b) under an existing warrant of commitment, until a determination is made on the application, as long as the application is made before the expiry of the existing warrant of commitment.

326 Process for High Court to consider application

(1) Where an application is transferred or made directly to the High Court under section 325, sections 252, 257 to 259, and 261 to 270 apply, with the necessary modifications.

(2) In determining the application,—

(a) sections 317, 318, 320, 321, 323, and 324 apply as appropriate, with the necessary modifications; and

(b) it is not the role of the nominated Judge to determine the matters described in section 243(1); and

(c) the classified information must be treated as accurate.

Duties of detaining officers

327 Duties of detaining officers

(1) It is the duty of an immigration officer when detaining any person under section 312—

(a) to inform the person at the time of the detention of the reason for the detention (unless in all the circumstances it is impracticable to do so); and

(b) to produce the officer's warrant; and

(c) to inform the person that he or she may contact a lawyer or, if appropriate, a responsible adult; and

(d) to inform the person of the maximum duration of the detention.

(2) It is the duty of every constable when arresting and detaining any person without warrant under section 313—

(a) to inform the person at the time of the arrest, unless in all the circumstances it is impracticable to do so, of the reason for the arrest, and that the arrest does not relate to a criminal matter; and

(b) in the case of a constable who is not in uniform, to produce his or her badge or other evidence of being a constable; and

(c) to inform the person that he or she may contact a lawyer or, if appropriate, a responsible adult; and

(d) to inform the person of the maximum duration of the detention.

(3) An immigration officer or a constable is not guilty of an offence and is not liable to any civil proceedings in respect of the arrest or detention by that officer or constable if he or she has reasonable and probable grounds for believing that the person is liable to arrest and detention under this Part.

(4) A failure to fulfil any of the duties mentioned in subsections (1) and (2) does not of itself deprive the immigration officer or the constable, or any assistant, of protection from criminal responsibility.

Compare: 1987 No 74 s 134

328 Additional powers relating to detention by immigration officer

(1) Where an immigration officer is exercising the power of detention under section 312, the immigration officer may use such physical force as the officer has reasonable grounds for believing is reasonably necessary—

(a) to prevent the detained person from harming any person; or

(b) to prevent the detained person from damaging any property; or

(c) to prevent the detained person from escaping or attempting to escape from detention; or

(d) to recapture the person, if the person is fleeing, having escaped from detention.

(2) By virtue of section 82 of the Search and Surveillance Act 2012, sections 85 to 87 of that Act (about rub-down searches) apply to this section, and by virtue of section 89(1)(e) of that Act, Part 4 of that Act (and in particular sections 124 to 126 (about searches of the person)) also applies.

(3) *[Repealed]*

(4) *[Repealed]*

(5) *[Repealed]*

(6) An immigration officer who uses physical force or undertakes a search under this section must, not later than 3 working days after the use of the force or the search, give to the chief executive a written report of the use of the force or search, the circumstances in which it was used or conducted, and the matters

that gave rise to the reasonable grounds to believe required by subsection (1) or (2).

Section 328(2): replaced, on 7 May 2015, by section 78 of the Immigration Amendment Act 2015 (2015 No 48).

Section 328(3): repealed, on 7 May 2015, by section 78 of the Immigration Amendment Act 2015 (2015 No 48).

Section 328(4): repealed, on 7 May 2015, by section 78 of the Immigration Amendment Act 2015 (2015 No 48).

Section 328(5): repealed, on 7 May 2015, by section 78 of the Immigration Amendment Act 2015 (2015 No 48).

329 Arresting or detaining officer may seek assistance

(1) Where a constable is arresting any person under this Act, the constable may call upon any person in the vicinity for assistance.

(2) Where an immigration officer is detaining any person under section 312, the officer may call upon any person in the vicinity for assistance.

(3) Every person so called upon is justified (as defined in section 2(1) of the Crimes Act 1961) in assisting, and he or she has all the protection and privileges of an immigration officer when giving his or her assistance, unless that person knows that there is no reasonable ground for the arrest or detention.

Compare: 1987 No 74 s 135

Section 329(3): amended, on 7 May 2015, by section 79(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 329(3): amended, on 7 May 2015, by section 79(2) of the Immigration Amendment Act 2015 (2015 No 48).

Form of custody

330 Approval of premises for purpose of immigration detention

The chief executive may approve any premises for the purpose of detention under this Act.

331 Form of custody of persons detained without warrant overnight

Every person who is placed in custody under section 313 and is to be detained overnight must be detained,—

(a) in the case of a person under 18 years of age who is not married or in a civil union, in—

(i) a residence (within the meaning of section 2(1) of the Oranga Tamariki Act 1989) or other premises under the control of, or approved by, the chief executive of the department for the time being responsible for the administration of the Oranga Tamariki Act 1989; or

(ii) any other premises agreed to by an immigration officer and the person's parent, guardian, or responsible adult; or

(b) in any other case, in—

(i) premises approved by the chief executive under section 330; or

(ii) a police station.

Compare: 1987 No 74 s 128(6)

Section 331(a): amended, on 7 May 2015, by section 80(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 331(a)(i): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 331(a)(ii): amended, on 7 May 2015, by section 80(2) of the Immigration Amendment Act 2015 (2015 No 48).

332 Form of custody of persons detained under warrant of commitment

Every person who is to be detained in custody under a warrant of commitment must be detained,—

(a) in the case of a person under 18 years of age who is not married or in a civil union, in a place approved for the purpose by the District Court Judge before whom the person is brought, being—

(i) a residence (within the meaning of section 2(1) of the Oranga Tamariki Act 1989) or other premises under the control of, or approved by, the chief executive of the department for the time being responsible for the administration of the Oranga Tamariki Act 1989; or

(ii) any other premises agreed to by an immigration officer and the person's parent, guardian, or responsible adult; or

(iii) premises approved by the chief executive under section 330; or

(b) in any other case,—

(i) in a prison; or

(ii) in other premises approved for the purpose by the Judge, being premises approved by the chief executive under section 330.

Compare: 1987 No 74 s 62

Section 332(a): amended, on 7 May 2015, by section 81(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 332(a)(i): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 332(a)(ii): amended, on 7 May 2015, by section 81(2) of the Immigration Amendment Act 2015 (2015 No 48).

333 Special provisions relating to custody

(1) Every person to whom a warrant of commitment is addressed under this Act is justified in detaining in accordance with the terms of the warrant any person who the addressee of the warrant believes on reasonable grounds to be the person named in the warrant, whether or not there is any defect in the issuing of the warrant.

(2) Where any person (the **detainee**) is held in custody under this Act (whether pursuant to a warrant of commitment or otherwise), the person responsible for the detainee's custody must—

(a) inform the detainee of the detainee's right to contact a lawyer or any responsible adult nominated by or in respect of the detainee under section 375 (or, where the detainee is under 18 years of age, a parent or guardian of the detainee); and

(b) on request by the detainee, any lawyer or agent acting for the detainee, or, where appropriate, any responsible adult, parent, or guardian, take all such reasonable steps as may be practicable to enable the lawyer or agent, or the responsible adult, parent, or guardian, to visit the detainee and communicate with the detainee in private.

(3) Where a person is detained under this Act in a prison, that person must be treated in accordance with the Corrections Act 2004 and any regulations made under that Act regulating the treatment of prisoners detained in prisons under this Act.

(4) A person to whom a warrant of commitment is addressed may take such reasonable measures as are necessary to give effect to the warrant.

Compare: 1987 No 74 s 140

334 Additional provisions relating to custody in approved premises

(1) Without limiting section 333(4), a person who is in charge of premises approved under section 330 and any person acting under the authority of that person may, for the purpose of giving effect to a warrant of commitment or detention under section 313, use such physical force as the person has reasonable grounds for believing is reasonably necessary—

(a) to prevent the person to whom the warrant or detention applies (the **detainee**) from harming any person; or

(b) to prevent the detainee from damaging any property; or

(c) to prevent the detainee from escaping or attempting to escape from custody; or

(d) to recapture the detainee, if the detainee is fleeing after having escaped from custody.

(2) A person who uses physical force for any of the purposes referred to in subsection (1)—

(a) may use no more physical force than is reasonably necessary in the circumstances; and

(b) must as soon as practicable report the relevant incident to the person in charge of the premises concerned.

(3) Where physical force is used in respect of a detainee by a person to whom subsection (1) applies, the person in charge of the premises concerned must—

(a) document the force used and the circumstances surrounding the use of that force; and

(b) as soon as is reasonably practicable, deliver the detainee into the custody of a constable for the purpose of bringing the detainee before a District Court Judge to determine the matters specified in subsection (4) or (5).

(4) Where a detainee is delivered into the custody of a constable under subsection (3), and he or she is subject to a warrant of commitment,—

(a) a constable must as soon as practicable bring the person before a District Court Judge to consider the terms of the warrant of commitment; and

(b) the Judge may either confirm the existing warrant of commitment or amend the warrant by altering the place of detention specified in it (and, if appropriate, the person to whom it is addressed).

(5) If a detainee is delivered into the custody of a constable under subsection (3) and he or she is detained under section 313, an immigration officer must as soon as practicable apply under section 316 for a warrant of commitment in respect of the person (unless the immigration officer agrees with the person to residence and reporting requirements under section 315).

(6) The Judge may also issue a further warrant of commitment in accordance with the relevant provisions of this Part where an immigration officer makes a contemporaneous application for a further warrant under section 316.

(7) A person who is delivered into the custody of a constable under this section and is to be detained overnight must be detained in the manner provided by section 332.

(8) For the avoidance of doubt, nothing in this section limits or affects any provision of the Crimes Act 1961, or any rule of law, that renders any circumstances—

(a) a justification or excuse for the use of force; or

(b) a defence to a charge involving the use of force.

Compare: 1987 No 74 s 140A

Delivery of person for purpose of deportation

335 Delivery of person into custody of immigration officer or police for purposes of deportation

(1) Where a person is being held in custody pursuant to a warrant of commitment issued under this Part, an immigration officer or a constable may request the manager or other person in charge of the prison or other premises in which that person is held in custody to deliver the person into the custody of a constable for arrest and detention under section 313 or an immigration officer for detention under section 312 for the purpose of executing the person's deportation or effecting the person's departure from New Zealand, and the manager or other person must deliver the person accordingly.

(2) Where a person is in prison undergoing imprisonment, an immigration officer or a constable may, on the date that the person is due to be released from imprisonment, request that, instead of releasing the person from custody, the manager or other officer in charge deliver the person into the custody of a constable for arrest and detention under section 313 or an immigration officer for detention under section 312 for the purpose of executing the person's deportation or effecting the person's departure from New Zealand, and the manager or other person must deliver the person accordingly.

336 Person being deported must be returned to custody or conditions reimposed if craft not available as planned

(1) This section applies if the following circumstances arise:

(a) a craft that was to take from New Zealand a person in relation to whom a deportation order is being executed, or whose departure is being effected,—

(i) ceases to be available for any reason; or

(ii) is, or is likely to be, delayed in New Zealand for more than 96 hours; or

(b) for any other reason it is not practicable in all the circumstances for the person to leave New Zealand at the expected time.

(2) When this section applies,—

(a) a person who was released from custody pursuant to a warrant of commitment must be returned to the custody of the person to whom the warrant of commitment was addressed, and for that purpose the warrant remains in full force and effect:

(b) a person who has been subject to residence and reporting conditions under section 315, or released on conditions under section 320, may once again be released on those conditions:

(c) in any other case, an application may be made under section 316 for a warrant of commitment authorising the further detention of the person.

Special provision where epidemic management notice in force

337 During epidemic District Court may deal with certain matters on basis of documents only

(1) While an epidemic management notice is in force, any matter for which this Act requires a person to be brought before a District Court Judge may be dealt with by a District Court Judge on the basis of documents only, without the person being brought before the Judge.

(2) Subsection (1) overrides every provision of this Act requiring a person to be brought before a District Court Judge for the consideration or determination of a matter.

(3) If the notice applies to only stated parts of New Zealand, subsection (1) applies within those parts only.

Compare: 1987 No 74 s 129ZC

338 Modification during epidemic of requirements to bring people before District Court Judge

(1) This subsection applies to a requirement imposed by or under this Act if it requires a person to be brought before a District Court Judge at intervals of not more than a stated duration for consideration or further consideration of a question.

(2) While an epidemic management notice is in force, it is a sufficient compliance with a requirement to which subsection (1) applies if, at intervals of not more than 28 days, a District Court Judge considers or further considers the question concerned.

(3) If the notice applies to only stated parts of New Zealand, subsection (2) applies within those parts only.

Compare: 1987 No 74 s 129ZD

339 During epidemic certain warrants to have effect for 28 days

(1) If a warrant of commitment issued under this Act was in force immediately before the commencement of an epidemic management notice, it has effect as if it had authorised the detention of the person named in it for a period of 28 days.

(2) Subsection (1) overrides every provision of this Act to the contrary.

(2A) In subsection (1), **warrant of commitment** does not include a mass arrival warrant issued under section 317B (in respect of all or specified members of a mass arrival group) for a period of more than 28 days.

(3) If the notice applies to only stated parts of New Zealand, subsections (1) and (2) apply within those parts only.

Compare: 1987 No 74 s 129ZE

Section 339 heading: amended, on 7 May 2015, by section 82(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 339(2A): inserted, as section 339 first subsection (3), on 19 June 2013, by section 17 of the Immigration Amendment Act 2013 (2013 No 39).

Section 339(2A) subsection number: replaced, on 7 May 2015, by section 82(2) of the Immigration Amendment Act 2015 (2015 No 48).

340 Application of section 320 during epidemic

(1) While an epidemic management notice is in force, an immigration officer and a released person may agree in writing to vary a condition imposed under section 320—

(a) whether or not the order containing it provides for them to do so; and

(b) whether or not they have the consent of a District Court Judge.

(2) If the notice applies to only stated parts of New Zealand, subsection (1) applies within those parts only.

341 Calculation of consecutive period of detention for purposes of section 323

(1) In calculating for the purposes of section 323 the consecutive period for which a person has been detained under 1 or more warrants of commitment under this Part,—

(a) no account is to be taken of any periods of detention occurring while an epidemic management notice is in force; but

(b) periods of detention do not cease to be consecutive just because they include periods during which an epidemic management notice was in force.

(2) If the epidemic management notice applies to only stated parts of New Zealand, subsection (1) applies within those parts only.

Part 10
Offences, penalties, and proceedings

Offences

342 Provision of false or misleading information

(1) Every person commits an offence against this Act who—

(a) makes any statement, or provides any information, evidence, or submission, knowing that it is false or misleading in any material respect, in support of—

(i) any application or request (whether by that person or by another person) for a visa or entry permission, or any expression of interest in a visa; or

(ii) any request for variation, waiver, or cancellation of the conditions of a visa; or

(iii) any appeal or application in the nature of an appeal to the Minister or the Tribunal; or

(b) produces or surrenders any document or supplies any information to an immigration officer or a refugee and protection officer knowing that it is false or misleading in any material respect; or

(c) completes any document required as part of a border requirement in a manner that the person knows to be false or misleading in any particular, or fails to comply with any of his or her other responsibilities under section 103.

(2) To avoid doubt, no proceedings under subsection (1)(b) may be brought if the documents or information are supplied in the circumstances to which Article 31.1 of the Refugee Convention applies.

Compare: 1987 No 74 ss 126(4), 142(1)(a), (c)

343 Aiding and abetting

(1) Every person commits an offence against this Act who,—

(a) for a material benefit, aids, abets, incites, counsels, or procures any other person to be or to remain unlawfully in New Zealand or to breach any condition of a visa granted to the other person; or

(b) whether in or outside New Zealand, and whether or not the other person in fact enters New Zealand, aids, abets, incites, counsels, or procures any other person to unlawfully enter New Zealand,—

(i) knowing that the other person's entry into New Zealand is or would be unlawful; or

(ii) being reckless as to whether the other person's entry into New Zealand is or would be unlawful; or

(c) whether in or outside New Zealand, aids, abets, incites, counsels, or procures any other person to complete a document in a manner that the person aiding or assisting knows to be false or misleading in any particular, being a document required for the purposes of—

(i) section 98 or 103; or

(ii) any application or request (whether by that person or by another person) for a visa or entry permission, or any expression of interest in a visa; or

(iii) any request for variation, waiver, or cancellation of the conditions of a visa; or

(iv) any appeal or application in the nature of an appeal to the Minister or the Tribunal; or

(d) aids, abets, incites, counsels, or procures any other person to be or to remain unlawfully in New Zealand or to breach any condition of a visa granted to the other person under this Act.

(2) In subsection (1)(a), **for a material benefit** has the same meaning as in section 2(1) of the Crimes Act 1961.

(3) For the purposes of subsection (1)(b), a person unlawfully enters New Zealand if the person—

(a) arrives in New Zealand in a manner that does not comply with section 103; or

(b) arrives in New Zealand without holding a visa, if the person requires a visa to travel to New Zealand; or

(c) arrives in New Zealand as the holder of a visa, or is granted a visa on arrival in New Zealand, but—

(i) the visa was or is granted in a false identity; or

(ii) any of the information provided in relation to the person's application for the visa was fraudulent, forged, false, or misleading, or relevant information was concealed; or

(d) is granted entry permission but—

(i) the entry permission was or is granted on the basis of a visa granted in a false identity; or

(ii) any of the information provided in relation to the person's application for the entry permission was fraudulent, forged, false, or misleading, or relevant information was concealed; or

(e) *[Repealed]*

(f) enters New Zealand in any other manner and, in doing so, does not comply with the requirements of this Act.

(4) To avoid doubt, a person unlawfully enters New Zealand within the meaning of subsection (3) whether or not any action has been taken under this Act in relation to the visa or entry permission used by the person for the purpose of entering (for example, conviction of the person for procuring a visa by fraud or revocation of the person's entry permission).

Compare: 1987 No 74 s 142(1)(ea), (eb), (ec), (f)

Section 343(1)(b): amended, on 19 June 2013, by section 15(1) of the Immigration Amendment Act 2013 (2013 No 39).

Section 343(3): inserted, on 19 June 2013, by section 15(2) of the Immigration Amendment Act 2013 (2013 No 39).

Section 343(3)(c): replaced, on 7 May 2015, by section 83 of the Immigration Amendment Act 2015 (2015 No 48).

Section 343(3)(d): replaced, on 7 May 2015, by section 83 of the Immigration Amendment Act 2015 (2015 No 48).

Section 343(3)(e): repealed, on 7 May 2015, by section 83 of the Immigration Amendment Act 2015 (2015 No 48).

Section 343(4): inserted, on 19 June 2013, by section 15(2) of the Immigration Amendment Act 2013 (2013 No 39).

344 Obstruction or failing to meet requirements

Every person commits an offence against this Act who,—

(a) without reasonable excuse, refuses or fails to produce or surrender any document, or to supply any information, when required to do so by an immigration officer or a refugee and protection officer in accordance with any of the provisions of this Act; or

(b) after being warned in accordance with section 279, refuses or fails without reasonable excuse to comply with any requirement of an immigration officer under that section; or

(c) fails to remain in an immigration control area or other prescribed place when required to do so, or to follow an immigration officer's instructions while in an immigration control area or other prescribed place; or

(d) resists or intentionally obstructs any immigration officer, refugee and protection officer, or constable in the exercise of the powers of that officer or constable under this Act; or

(e) refuses or fails to provide biometric information under section 104, 111, or 120; or

(f) refuses or fails to provide biometric information in accordance with a compulsion order.

Compare: 1987 No 74 s 142(1)(b), (g)

Section 344(c): replaced, on 7 May 2015, by section 84 of the Immigration Amendment Act 2015 (2015 No 48).

345 Improper dealings with immigration or identity documents

(1) Every person commits an offence against this Act who, whether in or outside New Zealand, produces, surrenders, or passes off an immigration or identity document—

(a) as relating to the person when in fact, to the person's knowledge, the document relates to some other person; or

(b) knowing the document to be forged or to have been obtained fraudulently.

(2) Every person commits an offence against this Act who, whether in or outside New Zealand, sells, hires, lends, gives, or otherwise disposes of an immigration or identity document relating to the person to any other person (the **receiver**) knowing that the receiver intends to do 1 or more of the following (but without necessarily knowing which of the following the receiver will do):

(a) produce it or pass it off as relating to the receiver or some other person; or

(b) sell, hire, lend, give, or otherwise dispose of it.

(3) Every person commits an offence against this Act who, whether in or outside New Zealand, sells, hires, lends, gives, or otherwise disposes of an immigration or identity document relating to the person to any other person (the **receiver**) intending the receiver to do 1 or more of the following (but without necessarily intending which of the following the receiver will do):

(a) produce it or pass it off as relating to the receiver or some other person; or

(b) sell, hire, lend, give, or otherwise dispose of it.

(4) In this section, **immigration or identity document** means—

(a) a passport; or

(b) a certificate of identity; or

(c) an endorsement in a passport of the type described in section 384; or

(d) evidence of a visa; or

(e) an invitation to apply for a visa; or

(f) a certificate of citizenship; or

(g) anything purporting to be a document described in any of paragraphs (a) to (f).

Compare: 1987 No 74 s 142(1)(d), (e)

346 Impersonation

Every person commits an offence against this Act who, not being an immigration officer or a refugee and protection officer, personates or pretends to be an immigration officer or a refugee and protection officer.

Compare: 1987 No 74 s 142(1)(h)

347 Publishing false or misleading information

Every person commits an offence against this Act who, for the purpose of encouraging, inducing, deterring, or preventing immigration to New Zealand of any person or class of persons, publishes, disseminates, or causes or procures the publication of any information or representation knowing that the information or representation is false or misleading.

Compare: 1987 No 74 s 142(1)(i)

348 Alteration of forms

Every person commits an offence against this Act who, not being an immigration officer or a refugee and protection officer,—

(a) after the person to whom a form (that is required to be completed for the purposes of this Act) relates has signed it and declared its contents to be true,—

(i) alters information entered on it; or

(ii) enters further information on it; or

(iii) alters any material attached to it; or

(iv) attaches any material or further material to it; and

(b) allows the form to leave his or her possession without writing on it and signing a statement of—

(i) the information or material that has been altered, entered, or attached; and

(ii) why and by whom the information or material has been altered, entered, or attached.

Compare: 1987 No 74 s 142(2)

349 Offences relating to carriers, and persons in charge, of craft

(1) Every carrier, or person in charge, of a commercial craft commits an offence who—

(a) fails without reasonable excuse to comply with any of the carrier's or the person's responsibilities under section 96(2); or

(b) allows a person to travel to, or from, New Zealand before a decision has been made by the chief executive under section 97(1) or 97A(1); or

(c) having been notified under section 97(2) of a decision made by the chief executive under section 97(1)(b) or (c), without reasonable excuse fails to ensure that the person to whom the decision relates complies with it; or

(ca) having been notified under section 97A(3) of a decision made by the chief executive under section 97A(1)(b) or (c), fails without reasonable excuse to ensure that the person to whom the decision relates complies with it; or

(d) fails without reasonable excuse to comply with any of the carrier's or the person's obligations under section 102(2), (4), or (5).

(e) *[Repealed]*

(2) Every carrier, or person in charge, of a craft commits an offence who fails without reasonable excuse to comply with any of the requirements of—

(a) section 101(1)(a); or

(b) section 118(1)(a); or

(c) sections 101(1)(b), (c), and (d), 101(2), and 118(1)(b) and (c).

(3) Every person in charge of a craft commits an offence who fails without reasonable excuse to comply with section 101(3).

(4) Every carrier of a craft commits an offence who fails to comply with section 118(2).

(5) To avoid doubt, proceedings in respect of an offence against subsection (1), (2), or (3) may be taken—

(a) against the carrier, or the person in charge, of the craft, but not both:

(b) whether the offence occurred in or outside New Zealand.

Compare: 1987 No 74 ss 125AA(4), 125AC(1), (2), 125AE(1), (2), 125(6)–(8)

Section 349(1)(b): replaced, on 28 September 2017, by section 277(1) of the Intelligence and Security Act 2017 (2017 No 10).

Section 349(1)(ca): inserted, on 28 September 2017, by section 277(2) of the Intelligence and Security Act 2017 (2017 No 10).

Section 349(1)(d): replaced, on 6 June 2015, by section 85 of the Immigration Amendment Act 2015 (2015 No 48).

Section 349(1)(e): repealed, on 6 June 2015, by section 85 of the Immigration Amendment Act 2015 (2015 No 48).

350 Offences by employers

(1) Every employer commits an offence against this Act who—

(a) allows or continues to allow any person to work in that employer's service, knowing that the person is not entitled under this Act to do that work; or

(b) allows a person who is not entitled under this Act to work in the employer's service to do that work.

(2) Subsection (1)(a) applies whether the person commenced work in the employer's service before or after the commencement of this section.

(3) It is a defence to a charge under subsection (1)(b) that the employer—

(a) did not know that the person was not entitled to do the work; and

(b) took reasonable precautions and exercised due diligence to ascertain whether the person was entitled to do the work.

(4) Except as provided in subsection (3), it is not a defence to a charge under subsection (1)(b) that the employer did not know that the person was not entitled under this Act to do that work.

(5) A charge alleging an offence against this section may specify any day on which it is alleged the person was working for the employer, and need not state the day on which that work is alleged to have commenced.

(6) For the purposes of this section, an employer is treated as knowing that an employee is not entitled under this Act to do any particular work if, at any time in the preceding 12 months (whether before or after the commencement of this section), the employer has been informed of that fact in writing by an immigration officer.

(7) No employer is liable for an offence against this section in respect of any period during which the employer continues to allow any person to work in the employer's service in compliance with the minimum requirements of any employment agreement (within the meaning of the Employment Relations Act 2000) relating to the giving of notice on termination of employment.

Compare: 1987 No 74 s 39

Section 350(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

351 Exploitation of unlawful employees and temporary workers

(1) Every employer commits an offence against this Act who,—

(a) while allowing an unlawful employee or temporary worker to work in the employer's service,—

(i) is responsible for a serious failure to pay to the employee or worker money payable under the Holidays Act 2003; or

(ii) is in serious default under the Minimum Wage Act 1983 in respect of the employee or worker; or

(iii) is responsible for a serious contravention of the Wages Protection Act 1983 in respect of the employee or worker; or

(b) while allowing an unlawful employee or temporary worker to work in the employer's service, takes an action with the intention of preventing or hindering the employee or worker from—

(i) leaving the employer's service; or

(ii) leaving New Zealand; or

(iii) ascertaining or seeking his or her entitlements under the law of New Zealand; or

(iv) disclosing to any person the circumstances of his or her work for the employer.

(2) For the purposes of subsection (1)(a), the following are questions of fact:

(a) whether a failure to pay to a person money payable under the Holidays Act 2003 is serious:

(b) whether a default under the Minimum Wage Act 1983 in respect of a person is serious:

(c) whether a contravention of the Wages Protection Act 1983 in respect of a person is serious.

(3) For the purposes of subsection (1)(a), the following matters may be taken into account in deciding whether a failure, default, or contravention is serious:

(a) the amount of money involved:

(b) whether it comprises a single instance or a series of instances:

(c) if it comprises a series of instances,—

(i) how many instances it comprises:

(ii) the period over which they occurred:

(d) whether or not it was intentional:

(e) whether the employer concerned has complied with the record-keeping obligations imposed by the Act concerned:

(f) any other relevant matter.

(4) The following are examples of actions of the kind referred to in subsection (1)(b):

(a) taking or retaining possession or control of a person's passport, any other travel or identity document, or travel tickets:

(b) preventing or hindering a person from—

(i) having access to a telephone; or

(ii) using a telephone; or

(iii) using a telephone privately; or

(iv) leaving premises; or

(v) leaving premises unaccompanied:

(c) preventing or hindering a labour inspector (within the meaning of the Employment Relations Act 2000) from entering or having access to any place or premises to which he or she is entitled to have access under any enactment.

(5) Subsection (4) does not limit subsection (1)(b).

(6) A charge alleging an offence against subsection (1) may specify any day on which it is alleged the person was working for the employer, and need not state the day on which that work is alleged to have commenced.

(7) For the purposes of this section, an employer is treated as knowing—

(a) that an employee is not entitled under this Act to do any particular work if, at any time in the preceding 12 months (whether before or after the commencement of this subsection) the employer has been informed of that fact in writing by an immigration officer; and

(b) that a worker holds a temporary entry class visa if, at any time in the preceding 12 months (whether before or after the commencement of this subsection) the employer has been informed of that fact in writing by an immigration officer.

(8) In this section, in relation to an employer,—

temporary worker means a person—

(a) who the employer knows holds a temporary entry class visa; or

(b) who holds a temporary entry class visa and in respect of whom the employer is reckless as to whether or not the person holds a temporary entry class visa

unlawful employee means a person who undertakes work for the employer that—

(a) the employer knows, under this Act, the person is not entitled to undertake; or

(b) the person is, under this Act, not entitled to undertake and in respect of which the employer is reckless as to whether or not the person is entitled to undertake the work.

Compare: 1987 No 74 s 39A

Section 351 heading: amended, on 7 May 2015, by section 86(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 351(1)(a): amended, on 7 May 2015, by section 86(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 351(1)(a)(i): amended, on 7 May 2015, by section 86(3) of the Immigration Amendment Act 2015 (2015 No 48).

Section 351(1)(a)(ii): amended, on 7 May 2015, by section 86(3) of the Immigration Amendment Act 2015 (2015 No 48).

Section 351(1)(a)(iii): amended, on 7 May 2015, by section 86(3) of the Immigration Amendment Act 2015 (2015 No 48).

Section 351(1)(b): amended, on 7 May 2015, by section 86(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 351(1)(b): amended, on 7 May 2015, by section 86(3) of the Immigration Amendment Act 2015 (2015 No 48).

Section 351(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 351(7): replaced, on 7 May 2015, by section 86(4) of the Immigration Amendment Act 2015 (2015 No 48).

Section 351(8): replaced, on 7 May 2015, by section 86(5) of the Immigration Amendment Act 2015 (2015 No 48).

352 Offences by education providers

(1) Every education provider commits an offence against this Act who—

(a) allows or continues to allow any other person to undertake a course of study knowing that the person is not entitled under this Act to undertake the course; or

(b) allows any other person to undertake a course of study if the person is not entitled under this Act to undertake the course.

(2) Subsection (1)(a) applies whether the person commenced the course of study before or after the commencement of this section.

(3) No person commits an offence under subsection (1) by reason of allowing or continuing to allow a person who is not entitled to study in New Zealand to undertake compulsory education.

(4) It is a defence to a charge under subsection (1)(b) that the education provider—

(a) did not know that the person was not entitled to undertake the course of study; and

(b) took reasonable precautions and exercised due diligence to ascertain whether the person was entitled to undertake that course.

(5) Except as provided in subsection (4), it is not a defence to a charge under subsection (1)(b) that the education provider did not know that the person was not entitled under this Act to undertake that course of study.

(6) A charge alleging an offence against this section may specify any day on which it is alleged the person was undertaking the course of study, and need not state the day on which it is alleged that the person commenced the course.

(7) For the purposes of this section, allowing a person to undertake a course of study includes accepting the person for enrolment in the course.

(8) For the purposes of this section, a person is treated as knowing that another person is not entitled under this Act to study in New Zealand if, at any time in the preceding 12 months (whether before or after the commencement of this section), the person has been informed of that fact in writing by an immigration officer.

Compare: 1987 No 74 s 40

Section 352(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

353 Offences in relation to Tribunal

(1) Every person commits an offence who, after being summoned to attend to give evidence before the Tribunal or to produce to it any papers, documents, records, or things, without sufficient cause,—

(a) fails to attend in accordance with the summons; or

(b) refuses to be sworn or to give evidence, or having been sworn refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer; or

(c) fails to produce any such paper, document, record, or thing.

(2) Every person commits an offence who—

(a) intentionally obstructs or hinders the Tribunal or any member of it or any authorised person in any inspection or examination of papers, documents, records, or things under clause 10(1)(a) of Schedule 2; or

(b) without sufficient cause, fails to comply with any requirement of the Tribunal or any authorised person made under clause 10(1)(b) or (c) of Schedule 2; or

(c) without sufficient cause, acts in contravention of or fails to comply with any order made by the Tribunal under clause 10(3) of Schedule 2 or any term or condition of the order.

(3) No person summoned to attend before the Tribunal may be convicted of an offence against subsection (1) unless at the time of the service of the summons, or at some other reasonable time before the date on which the person was required to attend, there was made to the person a payment or tender of the amount determined under clause 16 of Schedule 2.

Compare: 1908 No 25 s 9

354 Failure to maintain confidentiality in relation to refugee or protection matters

Every person commits an offence who, without reasonable excuse,—

(a) contravenes section 151(1); or

(b) publishes information released in contravention of section 151(1).

Compare: 1987 No 74 s 129T(5)

Penalties

355 Penalties: general

(1) A person convicted of an offence against section 342(1)(b), 343(1)(a), 345, or 348 is liable to imprisonment for a term not exceeding 7 years, a fine not exceeding $100,000, or both.

(2) A person convicted of an offence against section 343(1)(b) or (c)(i) is liable to imprisonment for a term not exceeding 7 years, a fine not exceeding $100,000, or both, for each person in respect of whom the offence was committed.

(3) A person convicted of an offence against section 342(1)(c), 343(1)(d), 344(c) or (d), or 354 is liable to imprisonment for a term not exceeding 3 months, a fine not exceeding $10,000, or both.

(4) A person convicted of an offence against section 346 is liable to imprisonment for a term not exceeding 12 months, a fine not exceeding $15,000, or both.

(5) A person convicted of an offence against this Act, or against any regulations made under this Act, for which no specific penalty is provided in the Act or regulations is liable to a fine not exceeding $5,000.

(6) Where any person is convicted of an offence against section 343(1)(d) in respect of any person who is or was unlawfully in New Zealand, the court may, instead of or in addition to any other sentence that it may impose in respect of the offence, order that the offender pay the whole or any specified portion of the costs incurred or likely to be incurred in deporting the person in relation to whom the offence was committed.

(7) For the purposes of subsection (6), the costs incurred or likely to be incurred in deporting a person include—

(a) the costs of locating, detaining, and maintaining the person; and

(b) internal travel costs for the person; and

(c) external travel costs for the person.

Compare: 1987 No 74 s 144

Section 355(5): replaced, on 7 May 2015, by section 87 of the Immigration Amendment Act 2015 (2015 No 48).

356 Penalties: carriers, and persons in charge, of craft

(1) A person convicted of an offence against section 349 (except section 349(2)(b)) is liable,—

(a) in the case of a carrier of a craft, to imprisonment for a term not exceeding 3 months, a fine not exceeding $50,000, or both:

(b) in the case of a person in charge of a craft, to imprisonment for a term not exceeding 3 months, a fine not exceeding $25,000, or both.

(2) A person convicted of an offence against section 349(2)(b) is liable,—

(a) in the case of a carrier of a craft, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $20,000:

(b) in the case of a person in charge of a craft, to imprisonment for a term not exceeding 3 months or to a fine not exceeding $10,000.

Compare: 1987 No 74 ss 125AA(4), 125AC(3), 125AE(3), 125(6), (7)

357 Penalties: employers

(1) A person convicted of an offence against section 350(1)(a) is liable to a fine not exceeding $50,000.

(2) A person convicted of an offence against section 350(1)(b) is liable to a fine not exceeding $10,000.

(3) A person convicted of an offence against section 351(1) is liable to imprisonment for a term not exceeding 7 years, a fine not exceeding $100,000, or both, if the offence relates to—

(a) a temporary worker within the meaning of paragraph (a) of the definition of temporary worker in section 351(8); or

(b) an unlawful employee within the meaning of paragraph (a) of the definition of unlawful employee in section 351(8).

(4) A person convicted of an offence against section 351(1) is liable to imprisonment for a term not exceeding 5 years, a fine not exceeding $100,000, or both, if the offence relates to—

(a) a temporary worker within the meaning of paragraph (b) of the definition of temporary worker in section 351(8); or

(b) an unlawful employee within the meaning of paragraph (b) of the definition of unlawful employee in section 351(8).

Compare: 1987 No 74 ss 39(5), 39A(8)

Section 357(3): replaced, on 7 May 2015, by section 88 of the Immigration Amendment Act 2015 (2015 No 48).

Section 357(4): inserted, on 7 May 2015, by section 88 of the Immigration Amendment Act 2015 (2015 No 48).

358 Penalties: education providers

(1) A person convicted of an offence against section 352(1)(a) is liable to a fine not exceeding $50,000.

(2) A person convicted of an offence against section 352(1)(b) is liable to a fine not exceeding $30,000.

Infringement offences for carriers, or persons in charge, of craft

359 Infringement offences

In this Act, **infringement offence** means—

(a) an offence against section 349(1) or 349(2)(a):

(b) an offence prescribed as an infringement offence for the purposes of this Act by regulations made under section 400.

360 Proceedings for infringement offences

If a person who is a carrier, or a person in charge, of any craft is alleged to have committed an infringement offence, the person may either—

(a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or

(b) be served with an infringement notice as provided in section 362.

Section 360: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

361 Immigration officer may require information

When considering whether to issue an infringement notice, an immigration officer may require the person concerned to provide all or any of the following information:

(a) the full name of the person in charge of the craft:

(b) the date of birth of the person in charge of the craft:

(c) the full residential address and, if different, the full postal address of the person in charge of the craft:

(d) the legal name of the carrier of the craft:

(e) the full postal address of the carrier of the craft:

(f) an electronic address for service for the carrier:

(g) an electronic address for service for the person in charge of the craft.

Section 361(f): inserted, on 7 May 2015, by section 89 of the Immigration Amendment Act 2015 (2015 No 48).

Section 361(g): inserted, on 7 May 2015, by section 89 of the Immigration Amendment Act 2015 (2015 No 48).

362 Infringement notices

(1) If an immigration officer believes on reasonable grounds that a carrier, or a person in charge, of a craft has committed an infringement offence, the immigration officer may issue an infringement notice to the carrier, or the person in charge, of the craft.

(2) Every infringement notice must be in the prescribed form and must include the following particulars:

(a) sufficient detail to fairly inform the person of the time, place, and nature of the alleged infringement offence:

(b) the infringement fee for the infringement offence:

(c) an address at which the infringement fee may be paid:

(d) the time within which the infringement fee must be paid:

(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957:

(f) a statement that the person has a right to request a hearing:

(g) a statement of the consequences if the person does not pay the infringement fee and does not request a hearing:

(h) any other prescribed matters.

(3) Every infringement notice must be served on the carrier, or person in charge, of the craft who appears to have committed the infringement offence.

(4) *[Repealed]*

(5) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957 and, in that case, the provisions of that section apply with all necessary modifications.

Section 362(3): replaced, on 7 May 2015, by section 90 of the Immigration Amendment Act 2015 (2015 No 48).

Section 362(4): repealed, on 7 May 2015, by section 90 of the Immigration Amendment Act 2015 (2015 No 48).

363 Reminder notices

Regulations made under section 400 may prescribe the form of reminder notices to be used in relation to infringement offences under this Act.

364 Infringement fees

(1) Infringement fees prescribed under this Act may not exceed,—

(a) in the case of a person in charge of a craft, $2,500; and

(b) in the case of a carrier of a craft, $5,000.

(2) All infringement fees are payable to the chief executive, and the chief executive must pay all infringement fees received into a Crown Bank Account.

365 Revocation of infringement notices

An immigration officer may, by written notice served on the person to whom the infringement notice was issued, revoke an infringement notice at any time before—

(a) the infringement fee is paid; or

(b) an order for payment of a fine is made by a court under section 21 of the Summary Proceedings Act 1957.

Section 365: amended, on 7 May 2015, by section 91 of the Immigration Amendment Act 2015 (2015 No 48).

365A Service of notices

(1) This section applies to the following notices:

(a) an infringement notice served under section 362:

(b) a reminder notice referred to in section 363:

(c) a notice served under section 365 that revokes an infringement notice.

(2) Every notice to which this section applies must be served by way of—

(a) sending it to the electronic address for service of the recipient, in which case it is deemed to be received by the recipient on the date on which it was sent; or

(b) personal service on the recipient; or

(c) sending it by registered post to the recipient's last known place of residence or business, in which case it is deemed to be received by the recipient on the date on which it was posted.

(3) Subsection (2) applies despite anything in section 24 of the Summary Proceedings Act 1957, and,—

(a) if service is effected in accordance with subsection (2), the recipient is deemed to have consented to service in that way (despite sections 220 and 224(1)(b) of the Contract and Commercial Law Act 2017); and

(b) in any case, for the purpose of sections 387 and 389 of the Companies Act 1993, the service is deemed to have been service by way of leaving the notice at the recipient's address for service.

Section 365A: inserted, on 7 May 2015, by section 92 of the Immigration Amendment Act 2015 (2015 No 48).

Section 365A(3)(a): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Evidence in proceedings

366 Evidence in proceedings: certificates in relation to persons

(1) In any proceedings relating to any matter under this Act, whether before the Tribunal or a court, a certificate signed by an immigration officer or a refugee and protection officer and containing a statement in relation to any person to the effect of all or any of the matters described in subsection (2) or (3) is deemed to be proof of the truth of the statement, in the absence of proof to the contrary established on the balance of probabilities.

(2) A certificate under this section may, in relation to a person, state that—

(1) the person is not a New Zealand citizen; or

(2) the person holds or at any material time held, or does not hold or did not at any material time hold, a visa; or

(3) any visa granted to the person was granted for a specified period or on or until a specified date, or until the occurrence of a specified event, or was granted for an express purpose, or is or was subject to specified conditions; or

(4) the person is or was at any material time, or is not or was not at any material time, the subject of a visa waiver; or

(5) the person, or any visa or other document relating to or held by the person, is not, or was not at any material time, the subject of a special direction given under this Act; or

(6) the person was or was not, at any material time, granted entry permission; or

(7) an invitation to apply for a visa was or was not issued to the person, or was or was not revoked (including the date of issue or revocation, where appropriate); or

(8) a decision whether to grant any visa has been made; or

(9) an immigration officer or a refugee and protection officer was or was not satisfied as to any relevant specified matter; or

(10) a particular stage of processing an application had or had not been reached; or

(11) an automated electronic system was or was not applying criteria predetermined in accordance with immigration instructions or by the chief executive; or

(12) the result of the process described in paragraph (11) was or was not applied as the basis for a decision; or

(13) the person was served with a deportation liability notice on a specified date, or was deported from New Zealand on a specified date, or that there is or was, at any material time, a deportation order in force in respect of that person; or

(13A) the person was removed from New Zealand on a specified date; or

(14) the person was, at a specified time or for a specified period, liable for deportation; or

(15) for the purpose of obtaining any visa, the person while outside New Zealand made any statement or supplied any information to an immigration officer that was false or misleading in any material respect, or produced or surrendered to an immigration officer any passport or certificate of identity or other document that was forged or obtained fraudulently; or

(16) the person produced or surrendered to an immigration officer, while in New Zealand, any passport, certificate of identity, or other document that was forged or obtained fraudulently or that contained any evidence of a visa that was forged or so obtained, for the purpose of—

(a) obtaining a visa; or

(b) obtaining any variation, cancellation, or waiver of the conditions of any visa; or

(c) claiming any visa waiver; or

(d) supporting any appeal against deportation from New Zealand; or

(17) the person is or is not in New Zealand, or has or has not left New Zealand, or was or was not in New Zealand, or had or had not left New Zealand at any particular time or for or during any particular period; or

(18) the person has or has not lodged an appeal under any stated provision of Part 7; or

(19) a certain document or application was received by an immigration officer or a refugee and protection officer on a certain date; or

(20) the person is or is not an excluded person; or

(21) the person travelled to New Zealand on a certain commercial craft at a certain time; or

(22) the person did or did not travel to New Zealand before a decision was made by the chief executive under section 97(1); or

(22A) the person did or did not travel from New Zealand before a decision was made by the chief executive under section 97A(1); or

(23) the person travelled to New Zealand contrary to a decision made by the chief executive under section 97(1)(b) or (c); or

(23A) the person travelled from New Zealand contrary to a decision made by the chief executive under section 97A(1)(b) or (c); or

(24) the person did not provide, or otherwise make available, to the chief executive the information prescribed for the purposes of section 102(2); or

(25) the person has or has not, at any material time,—

(a) claimed to be a refugee in New Zealand or elsewhere; or

(b) been recognised as a refugee in New Zealand or elsewhere; or

(c) claimed recognition as a protected person in New Zealand; or

(d) been recognised as a protected person in New Zealand; or

(e) in a country other than New Zealand, claimed recognition as, or been recognised as, a person in need of protection under the Convention Against Torture or the Covenant on Civil and Political Rights; or

(26) the person, while in New Zealand, produced or surrendered to an immigration officer or a refugee and protection officer any passport, certificate of identity, or other document that was forged or obtained fraudulently; or

(27) a matter is or is not before a refugee and protection officer under section 143, 145, or 146; or

(28) a matter is or is not before the Tribunal under section 144 or 147.

(3) A certificate under this section may, in relation to a person, state that—

(a) fingerprints matching the person's fingerprints were obtained under a particular name in a particular country; or

(b) the person has or has not been granted any particular immigration status (including any particular type of visa) or citizenship under a particular name in a particular country; or

(c) the person has or has not been recognised as a refugee or a protected person under a particular name in a particular country; or

(d) the person has or has not been deported from a particular country under a particular name; or

(e) the person has or has not been issued with a passport, certificate of identity, or other document under a particular name in a particular country; or

(f) the person has or has not been convicted of, charged with, or under investigation for an offence under a particular name in a particular country; or

(g) the person has or has not been awarded a particular qualification under a particular name in a particular country; or

(h) the person was or was not employed in a particular position (by a particular employer if appropriate) under a particular name in a particular country.

Compare: 1987 No 74 s 143(1), (1A)

Section 366(2)(13A): inserted, on 7 May 2015, by section 93(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 366(2)(22A): inserted, on 28 September 2017, by section 278(1) of the Intelligence and Security Act 2017 (2017 No 10).

Section 366(2)(23A): inserted, on 28 September 2017, by section 278(2) of the Intelligence and Security Act 2017 (2017 No 10).

Section 366(2)(24): replaced, on 7 May 2015, by section 93(2) of the Immigration Amendment Act 2015 (2015 No 48).

367 Evidence in proceedings: certificates as to forms, documents, etc

For the purposes of any proceedings relating to any matter under this Act, whether before the Tribunal or a court,—

(a) a certificate signed by an immigration officer and containing a statement to the effect that any specified form was or was not approved and issued by the chief executive is sufficient evidence of the fact that it was or was not so approved and issued:

(b) a document purporting to be a special direction given under this Act, or a record of such a direction, or a copy of such a direction or record, and certified to be such by the Minister or an immigration officer, is sufficient evidence of the fact that such a special direction was given in respect of the person named, or the visa or document described, and on the date specified, in the document or certificate:

(c) a certificate signed by the Minister or an immigration officer and containing a statement to the effect that any specified document did or did not express immigration instructions applicable on any date or dates specified in the certificate is sufficient evidence of the fact that the document did or did not express immigration instructions applicable on that date or those dates:

(d) a document purporting to be a deportation liability notice or deportation order made under Part 6, or a copy of such a notice or order that is certified to be such by the Minister or an immigration officer, is sufficient evidence of the fact that such a deportation liability notice or deportation order was made under this Act in respect of the person named, and on the date specified, in the notice or order:

(e) a certificate signed by the chief executive stating that a particular place is or was an immigration control area is sufficient evidence of the fact that that place is or was an immigration control area.

Compare: 1987 No 74 s 143(3)–(4B), (6)

368 Evidence in respect of matters occurring and documents executed outside New Zealand

(1) The court, Tribunal, or other person or body conducting or in charge of any proceedings under this Act may, if it considers it fair and equitable to do so, receive as evidence any statement, document, or information tendered in respect of a document executed outside New Zealand, whether or not it would be normally admissible in a court of law.

(2) Where a certificate under section 366 contains a statement as to any matter specified in section 366(2)(15) or (3), the court, Tribunal, or other person or body conducting or in charge of the proceedings may receive as evidence any statement, document, or information tendered by or on behalf of the person named in the certificate in rebuttal of that statement, whether or not it would be otherwise admissible in a court of law.

(3) Where a statement, document, or information is received as evidence under subsection (1) or (2), the court, Tribunal, or other person or body conducting or in charge of the proceedings may determine the credibility or weight (if any) to be given in the proceedings to the document, statement, or information concerned.

Compare: 1987 No 74 s 143(2), (7)

369 Presumption that certificates duly authorised

Every person signing a certificate under section 366 or 367 must, in the absence of proof to the contrary, be presumed to be duly authorised to sign the certificate.

Compare: 1987 No 74 s 143(5)

Procedural provisions relating to offences

370 Procedural provisions relating to offences

(1) *[Repealed]*

(2) *[Repealed]*

(3) Only an immigration officer, a constable, or some other person authorised for the purpose by the Minister, may commence a proceeding for an offence against this Act or any regulations made under it.

Compare: 1987 No 74 s 145(1)–(3)

Section 370(1): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 370(2): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 370(3): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

371 Presumption of authority

For the purposes of section 370(3), or any other proceedings under this Act, it is unnecessary to prove that—

(a) a person is an immigration officer, a constable, or any other authorised person; or

(b) proceedings were commenced by an immigration officer, a constable, or any other authorised person.

Section 371(b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

372 Time for filing charging document

(1) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against this Act ends on the date that is 2 years after the earlier of—

(a) the date when the incident, situation, or set of circumstances to which the offence relates first became known to an immigration officer; or

(b) the date when the incident, situation, or set of circumstances to which the offence relates should reasonably have become known to an immigration officer.

(2) Subsection (1) does not apply to the offences set out in sections 342(1)(b), 343(1)(a), (b), or (c)(i), 345, 348, and 351.

Section 372: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Part 11
Miscellaneous provisions

Matters relating to immigration status of persons born in New Zealand

373 Immigration status of persons born in New Zealand on or after 1 January 2006

(1) This section applies to a person who—

(a) is born in New Zealand on or after 1 January 2006; and

(b) is not a New Zealand citizen.

(2) From birth, the person is deemed to have the most favourable immigration status of either of his or her parents at the time that he or she was born, as determined under section 374, and the provisions of this Act that apply to a person of that immigration status apply to the person accordingly until either—

(a) the person leaves New Zealand; or

(b) the person is accorded a different immigration status under, or by the operation of, this Act.

Compare: 1987 No 74 s 4A

374 Immigration status of persons whose status depends on immigration status of parent

(1) A person's immigration status for the purposes of section 373 is to be determined as follows:

(a) if both parents are recorded on the person's original birth record, whichever of the following is applicable:

(i) if both parents held any type of temporary visa, the person is deemed to hold a temporary visa of the duration of the unexpired period of the visa of the parent whose temporary visa has the longest unexpired period:

(ii) if 1 parent only held any type of temporary visa, the person is deemed to hold a temporary visa of the duration of the unexpired period of that parent's temporary visa:

(iii) if both parents held limited visas, the person is deemed to hold a limited visa of the duration of the unexpired period of the visa of the parent whose limited visa has the longest unexpired period:

(iv) if 1 parent only held a limited visa, the person is deemed to hold a limited visa of the duration of the unexpired period of that parent's limited visa:

(v) if both parents held interim visas, the person is deemed to hold an interim visa of the duration of the unexpired period of the visa of the parent whose interim visa has the longest unexpired period:

(vi) if 1 parent only held an interim visa, the person is deemed to hold an interim visa of the duration of the unexpired period of that parent's interim visa:

(vii) if both parents were unlawfully in New Zealand, the person is deemed to be unlawfully in New Zealand and to have unlawful status on the same basis and for the same duration as the parent whose unlawful status is of the shortest duration:

(b) if 1 parent only is recorded on the person's original birth record, whichever of the following is applicable:

(i) if the parent held a temporary visa, the person is deemed to hold a temporary visa of the duration of the unexpired period of the parent's temporary visa:

(ii) if the parent held a limited visa, the person is deemed to hold a limited visa of the duration of the unexpired period of the parent's limited visa:

(iii) if the parent held an interim visa, the person is deemed to hold an interim visa of the duration of the unexpired period of the parent's interim visa:

(iv) if the parent was unlawfully in New Zealand, the person is deemed to be unlawfully in New Zealand and to have unlawful status on the same basis and for the same duration as the parent's unlawful status.

(2) Where a person is deemed to hold a visa under this section, the visa expires on the person's departure from New Zealand, unless it has already expired.

(3) In this section, **unexpired period**, in relation to a visa, means the period of time remaining before the date or event on the occurrence of which the visa will expire, or the period after which the visa will expire, as calculated in accordance with section 63.

Compare: 1987 No 74 s 4A(4)

Minors

375 Minors to have responsible adult to represent their interests

(1) In any matters of the kind referred to in subsection (2) that relate to a person who is under 18 years of age and who is not married or in a civil union (in this section and sections 376 and 377 referred to as a **minor**),—

(a) the minor's interests are to be represented by the minor's parent; and

(b) the parent is the responsible adult for the minor for the purposes of this section and sections 376 and 377.

(2) If a minor does not have a responsible adult to represent the minor's interests by virtue of subsection (1), a responsible adult must be nominated in accord-

ance with this section to represent the minor's interests in relation to any of the following matters under this Act:

(a) the minor's liability for deportation, and the deportation of the minor:

(b) any claim by the minor for recognition as a refugee or a protected person:

(c) any appeal or review proceedings by the minor under this Act:

(d) any detention of the minor under this Act.

(3) The responsible adult is to be nominated by the Tribunal, an immigration officer, a refugee and protection officer, or a Judge, as the case may require.

(4) A person may be nominated as a responsible adult only if—

(a) the person is 20 years of age or more; and

(b) except in the case of a parent or guardian of the minor, the person is a New Zealand citizen or a resident or permanent resident; and

(c) the person is—

(i) a parent, guardian, or relative of the minor; or

(ii) a person suggested by the minor; or

(iii) any other person having responsibility for the minor or who is otherwise suitable to represent the minor's interests; or

(iv) if no appropriate person is otherwise available under this subsection, a person designated by the chief executive of the department for the time being responsible for the administration of the Oranga Tamariki Act 1989; and

(d) except in the case of a parent or guardian of the minor, the person agrees in writing to be nominated as a responsible adult.

(5) Should the need arise, and after such consultation as is reasonable in the circumstances, a substitute responsible adult may be nominated in accordance with the requirements of this section.

(6) The role of a responsible adult—

(a) relates only to the matters or proceedings in relation to which he or she was nominated; and

(b) finishes when the minor leaves New Zealand or the matter or proceedings concerned are completed, as the case may be.

(7) A responsible adult who is representing the interests of a minor in any matter of a kind referred to in subsection (2) must supply to an immigration officer, a refugee and protection officer, or the Tribunal, as the case may require, an address in New Zealand at which any communication relating to the minor may be notified to that adult.

Compare: 1987 No 74 s 141B

Section 375(4)(c)(iv): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

376 Role and rights of responsible adult

The following provisions apply to any dealings under this Act with a minor who has a responsible adult to represent his or her interests:

(a) the responsible adult may, on the minor's behalf,—

(i) appeal to the Tribunal under Part 7; or

(ii) appeal to the High Court under section 245; or

(iii) bring review proceedings in the High Court in accordance with this Act:

(b) the responsible adult may make submissions to the Tribunal:

(c) the responsible adult may appear and be heard in any District Court proceedings under this Act relating to the minor:

(d) to the extent practicable given the level of maturity and understanding of the minor, the responsible adult must attempt to elicit the views of the minor and make them known on behalf of the minor, where appropriate:

(e) any document required to be served on or notified to the minor is instead to be served on or notified to the responsible adult, and such service or notification is deemed to be service on or notification to the minor.

Compare: 1987 No 74 s 141C

377 Views of minor to be considered

In any proceedings or process of a kind referred to in section 375(2) in relation to a minor,—

(a) an opportunity must be given, so far as practicable, for the minor to express his or her views on the matter, whether personally or through a responsible adult; and

(b) due weight is to be given to those views having regard to the age and level of maturity and understanding of the minor.

Compare: 1987 No 74 s 141D

Special directions

378 Special directions

(1) The Minister may give to the chief executive or any other immigration officer, either in writing or orally, a special direction, in relation to any matter for which such a direction is contemplated by any provision of this Act or of regulations made under this Act, in respect of—

(a) any person, visa, or document; or

(b) any 2 or more persons, visas, or documents where by reason of any specific event, occurrence, or unusual circumstances there is a common link between those persons, visas, or documents.

(2) The Minister may give in writing a special direction—

(a) waiving the requirement to hold a visa permitting travel to New Zealand in relation to any class of persons, in accordance with section 69(2)(a):

(b) suspending, under section 69(2)(b), a visa waiver made in accordance with section 69(1):

(c) classifying persons to whom a transit visa waiver applies, in accordance with section 86(4)(a):

(d) suspending, under section 86(4)(b), a transit visa waiver made in accordance with section 86(2)(a).

(3) A special direction comes into force on the day on which it is made, or any later date specified in the direction.

(4) Where a special direction is given orally, the chief executive or immigration officer must as soon as possible make a written record of the content and date of the direction.

(5) A special direction may be subject to such conditions as the Minister thinks fit.

(6) A special direction may revoke or amend any previous special direction.

(7) Nothing in this section limits or affects the powers of the Minister to give all such instructions to the chief executive as the Minister thinks fit in the ordinary course of the administration of the immigration portfolio and of this Act.

(8) The decision whether to grant a special direction is in the absolute discretion of the Minister.

(9) A special direction is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act, unless this Act otherwise provides.

Compare: 1987 No 74 s 130

Section 378(9): inserted, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

379 Immigration officer to act in accordance with special direction

Any decision made, or discretion exercised, under this Act by an immigration officer must be made or exercised in accordance with any special direction that is—

(a) relevant to the decision; and

(b) in force at the time the decision is made.

Delegation of Minister's powers

380 Delegation of Minister's powers

(1) The Minister may, in writing, delegate to any immigration officer 1 or more of the powers conferred on the Minister by this Act, except—

(a) this power of delegation; and

(b) the power to certify immigration instructions under section 22; and

(c) the powers referred to in section 33(1) and (2) (which relate to the use of classified information); and

(d) the power to make a special direction under section 69(2)(a) or (b) (which relates to waiving the requirement for classes of persons to hold a visa permitting travel to New Zealand); and

(e) the power to make a special direction under section 86(4) in relation to transit visas; and

(f) the power to certify under section 163(1) that a person constitutes a threat or risk to security; and

(g) the power to make a decision of a kind referred to in section 139 or 199 in relation to a protected person who has committed certain crimes or been guilty of certain acts.

(2) The immigration officer to whom a delegation may be made may be an officer referred to by name or the officer who for the time being holds a specified position.

(3) Every delegation is revocable at will, and no delegation prevents the exercise of any power by the Minister.

(4) A delegation may be made subject to such restrictions and conditions as the Minister thinks fit, and may be made either generally or in relation to any particular case.

(5) A delegation no longer applies to a person when the person leaves the Department or service or employment in respect of which the delegation was made.

(6) Until revoked, a delegation continues in force according to its tenor, even if the Minister who made it has ceased to hold office, and continues to have effect as if made by the successor in office of that Minister.

(7) The fact that any immigration officer exercises any power of the Minister, other than a power referred to in subsection (1), is, in the absence of proof to the contrary, sufficient evidence that the officer has been authorised to do so by a delegation under this section.

Compare: 1987 No 74 s 131

Matters relating to chief executive

381 Chief executive may approve forms

(1) The chief executive may approve and issue application forms and any other forms that the chief executive considers necessary for the purposes of this Act, not being forms prescribed or to be prescribed by regulations made under this Act.

(2) Every document purporting to be in a form approved and issued by the chief executive under and for the purposes of this Act is deemed to have been so approved and issued unless the chief executive, an immigration officer, or a refugee and protection officer otherwise certifies.

(3) The chief executive referred to in clause 5(2) of Schedule 2 may approve and issue forms relating to appeals or matters (as defined in section 183) in the Tribunal—

(a) that he or she considers necessary for the purposes of this Act; and

(b) for which no forms are currently prescribed.

(4) Every document purporting to be in a form approved and issued by the chief executive referred to in clause 5(2) of Schedule 2 under this section is deemed to have been so approved and issued unless that chief executive otherwise certifies.

Section 381(3): amended, on 7 May 2015, by section 94 of the Immigration Amendment Act 2015 (2015 No 48).

382 Chief executive to designate immigration control areas

(1) The chief executive may designate the following places in New Zealand as immigration control areas:

(a) all or any part of the area of an airport:

(b) all or any part of the area of a port:

(c) any other place that the chief executive considers appropriate for processing people arriving in and departing from New Zealand.

(2) The chief executive must give written notice of a designation under this section to—

(a) the operator of the airport or port concerned; or

(b) the person otherwise in control of the place (being an owner, occupier, lessee, or sublessee).

(3) The chief executive must also publicly notify any designation under this section by making available a description of the designated area or place, free of charge, at—

(a) offices of the Department; and

(b) New Zealand Government offices overseas that deal with immigration matters.

383 Chief executive may designate places outside New Zealand where entry permission may be granted

(1) The chief executive may—

(a) designate places outside New Zealand (for example, ports, airports, or offices of the Department that are overseas) where an immigration officer may grant entry permission to a person before the person travels to New Zealand; and

(b) determine the class or classes of persons that may be granted entry permission at a designated place.

(2) The chief executive must publicly notify any designation under this section by making available a description of the designated place, free of charge, at—

(a) offices of the Department; and

(b) New Zealand Government offices overseas that deal with immigration matters.

Endorsement of New Zealand citizenship in foreign passports

384 Endorsement in foreign passport

(1) For the purpose of facilitating a person's entry into New Zealand, the chief executive may make an endorsement in relation to a passport (other than a New Zealand passport)—

(a) held by a New Zealand citizen to indicate the fact of the person's New Zealand citizenship:

(b) on which the person is entitled to travel to indicate the fact of the person's New Zealand citizenship.

(2) An endorsement is made by being entered and retained in the records (whether electronic or physical) of the Department in a manner determined by the chief executive.

(3) An endorsement may (but need not) be evidenced by a physical endorsement in the passport concerned.

(4) A New Zealand citizen who wishes to obtain an endorsement of the type described in subsection (1) must apply to the chief executive in the prescribed manner and include—

(a) the prescribed evidence to support his or her application; and

(b) either—

(i) a New Zealand passport issued on or after 5 November 2005; or

(ii) if the person does not hold a New Zealand passport issued on or after 5 November 2005, a photograph suitable for use as biometric information.

(5) The chief executive may cancel an endorsement given under subsection (1) if the person is deprived of, or renounces, his or her citizenship under the Citizenship Act 1977.

Responsibilities of certain operators of airports and ports

385 Certain operators of airports and ports to provide operating areas, accommodation, facilities, etc

(1) The operator of an airport or a port that is subject to a designation under section 382 must provide and maintain the operating areas, accommodation, facilities, buildings, equipment, and storage in the airport or port as the chief executive determines is reasonably necessary and suitable for carrying out immigration functions in relation to people arriving in and departing from New Zealand.

(2) The operator of the airport or port may impose a reasonable charge or charges on the Department for providing the operating areas, accommodation, facilities, buildings, equipment, and storage required by the chief executive under subsection (1), but no charge may be imposed on the Department in respect of any operating area used for the processing of persons arriving in or departing from New Zealand (including any area used for the purposes of ensuring that a person is placed on the first available craft leaving New Zealand).

(3) Subsection (2) applies despite anything to the contrary in the Airport Authorities Act 1966.

Compare: 1996 No 27 s 18(1), (2), (3)(a)

Notice requirements and addresses for communications

386 Serving and giving notices, etc, to Minister and officers

(1) If under this Act any notice or other document is to be served on or supplied to the Minister, it must be delivered to the Minister's office or to an immigration officer at an office of the Department.

(2) If under this Act any notice or other document is to be served on or supplied to an immigration officer or a refugee and protection officer, it must be delivered personally to an immigration officer or a refugee and protection officer or sent by registered post to an immigration officer or a refugee and protection officer at an office of the Department.

(3) *[Repealed]*

(4) *[Repealed]*

(5) *[Repealed]*

(6) *[Repealed]*

(7) *[Repealed]*

(8) This section applies unless a provision in this Act expressly provides otherwise.

Compare: 1987 No 74 s 146

Section 386 heading: replaced, on 7 May 2015, by section 95(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 386(3): repealed, on 7 May 2015, by section 95(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 386(4): repealed, on 7 May 2015, by section 95(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 386(5): repealed, on 7 May 2015, by section 95(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 386(6): repealed, on 7 May 2015, by section 95(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 386(7): repealed, on 7 May 2015, by section 95(2) of the Immigration Amendment Act 2015 (2015 No 48).

386A Serving and giving notices, etc, to other people

(1) This section applies where, under this Act or any regulations made under it, a notice or other document is required to be served on, or supplied, notified, or in any other way given to, a person other than a person referred to in section 386(1) or (2).

(2) A notice or other document that is required to be served on a person must be in writing and must be served by—

(a) personal service on the person; or

(b) sending it by registered post to the person's address for service; but if the address for service is the address of a lawyer or agent, service is effected only if the lawyer or agent signs a memorandum stating that he or she accepts service of the notice or document on behalf of the person.

(3) If a notice or other document is required to be supplied, notified, or in any other way given to a person, the notice or other document must be in writing and must be either given to the person personally or sent to the person's contact address, in which case,—

(a) if the address is a physical address, it must be sent by registered post to that address; and

(b) if the address is an electronic address, it must be sent by electronic means to that address.

(4) A notice or document served or sent by registered post is deemed to be received by the person to whom it is addressed,—

(a) if the address is in New Zealand, 7 days after the date on which it was sent; and

(b) if the address is outside New Zealand, 14 days after the date on which it was sent.

(5) A notice or other document sent to an electronic address is deemed to be received by the person to whom it is addressed 3 working days after the date on which it was sent.

(6) Subsection (4) applies unless the intended recipient proves that he or she did not receive the notice or document and the failure to receive it was not a result of fault on his or her part, and—

(a) he or she is—

(i) the holder of a residence class visa; or

(ii) a person described in section 187(1)(a) to (c); or

(b) the address to which the notice or document was sent is an address outside New Zealand.

Section 386A: inserted, on 7 May 2015, by section 96 of the Immigration Amendment Act 2015 (2015 No 48).

387 Address for service

(1) A person's address for service is, unless any of subsections (2) to (4) apply, either of the following provided by the person:

(a) the person's physical address (whether in or outside New Zealand):

(b) a physical address in New Zealand of a lawyer or other person who is acting as an agent for the person and is authorised by the person to accept service on his or her behalf.

(2) If the address provided by a person as his or her address for service is known not to be an address at which service can properly be effected, and if subsections (3) and (4) do not apply, the person's address for service is the person's contact address, if that address is a postal address.

(3) If a person is under 18 years of age and is not married or in a civil union, the person's address for service is,—

(a) if, in the notice or other document that is being sent, the person is named as a dependent child of another person, the address for service of that other person; or

(b) if a responsible adult has been determined or nominated under section 375 (or under section 141B of the former Act) to represent the person's interests, the address supplied by the responsible adult under section 375(7) (or under section 141B of the former Act).

(4) If a person is detained in custody or is required under an enactment to reside at a particular address, and if subsection (3) does not apply, the person's address for service is the postal address of the place where the person is detained or required to reside.

(5) A person who has provided an address for service may at any time substitute a different address for service by giving written notice of the new address to an immigration officer, a refugee and protection officer, or the Tribunal, as the case requires.

(6) Subsection (7) applies if the latest address provided by a person was provided before section 97 of the Immigration Amendment Act 2015 came into force.

(7) Despite subsection (1), the person's address for service is the person's New Zealand address (within the meaning of the Act as in force before section 97 of the Immigration Amendment Act 2015 came into force), unless any of subsections (2) to (4) applies.

Section 387: replaced, on 7 May 2015, by section 97 of the Immigration Amendment Act 2015 (2015 No 48).

387A Contact address

(1) A person's contact address is whichever of the following addresses the person has designated as his or her contact address, unless any of subsections (2) to (4) applies:

(a) the person's postal address:

(b) an electronic address for the person:

(c) the postal address or electronic address of a lawyer or other person who is acting as an agent for the person.

(2) If a person's designated contact address is known not to be an address at which the person can be contacted, and if subsections (3) and (4) do not apply, the person's contact address is whichever of the following addresses is considered most likely to be the address at which the person can be contacted:

(a) any other address referred to in subsection (1) that has been provided by the person:

(b) any address for the person that is obtained, after this section comes into force, as a result of the exercise by an immigration officer or constable of any of the powers under section 274, 276, 277, 278, or 280.

(3) If a person is under 18 years of age and is not married or in a civil union, the person's contact address is,—

(a) if, in the notice or other document that is being sent, the person is named as a dependent child of another person, the contact address of that other person; or

(b) if a responsible adult has been determined or nominated under section 375 (or under section 141B of the former Act) to represent the person's interests, the address supplied by the responsible adult under section 375(7) (or under section 141B of the former Act).

(4) If a person is detained in custody or is required under an enactment to reside at a particular address, and if subsection (3) does not apply, the person's contact

address is the postal address of the place where the person is detained or required to reside.

(5) If a person's contact address is an electronic address, the person is deemed to have consented to receive at that address all notices or other documents required to be supplied, notified, or in any other way given to the person, but only if the person provides the address after this section comes into force.

(6) A person who has designated an address as a contact address may at any time substitute a different contact address by written notice to an immigration officer, a refugee and protection officer, or the Tribunal, as the case requires.

(7) Subsection (8) applies if the latest address provided by a person was provided before section 97 of the Immigration Amendment Act 2015 came into force.

(8) Despite subsection (1), the person's contact address is the person's New Zealand address (within the meaning of the Act as in force before section 97 of the Immigration Amendment Act 2015 came into force), unless any of subsections (2) to (4) applies.

Section 387A: inserted, on 7 May 2015, by section 97 of the Immigration Amendment Act 2015 (2015 No 48).

387B Departures from sections 386A to 387A

Sections 386A to 387A are default rules that apply subject to any other provision of this Act, or any regulations made under it, that provide requirements for the manner of service or giving of notices and other documents in specific situations or circumstances.

Section 387B: inserted, on 7 May 2015, by section 97 of the Immigration Amendment Act 2015 (2015 No 48).

Immigration officers and refugee and protection officers

388 Designation of immigration officers

(1) The chief executive may designate as immigration officers—

(a) the persons employed in the Department that the chief executive considers are—

(i) necessary for the purposes of this Act; and

(ii) suitably qualified and trained; and

(b) such other agents of or persons in the service of the Government of New Zealand, or persons in the service of the government of another country, as the chief executive determines, whether designated individually or by class or position.

(2) The chief executive must specify which functions and powers an immigration officer is authorised to exercise under this Act, and an officer may not perform any functions or exercise any powers under this Act unless specifically authorised by the chief executive.

(3) An immigration officer authorised to exercise 1 or more of the following powers must be issued with a warrant of designation, signed by the chief executive, specifying which of those powers the officer may exercise:

(a) the power to deport a person under section 178:

(b) the power of entry and inspection under sections 276, 277, 277A, and 278:

(c) the powers under sections 279, 280, 281, 281A, and 281B to require information or documents for the purpose of ensuring compliance with this Act:

(d) the powers under sections 282, 283, 284, 285, and 285A at a border:

(e) the power of entry and search under section 286:

(f) the power to require biometric information, special biometric information, or both under section 288:

(g) the power to detain a person under section 312.

(4) A warrant is sufficient evidence of the officer's designation as an immigration officer, and the officer's authorisation to perform the functions and exercise the powers specified in it.

(5) To avoid doubt, the chief executive need not be issued with a warrant of designation, and may perform or exercise all the powers and functions of an immigration officer under this Act.

(6) A person may not at any one time be designated as an immigration officer and a refugee and protection officer.

(7) Whenever an immigration officer (including a constable exercising the powers of an immigration officer) seeks entry to any premises, building, or craft in the course of exercising a power described in subsection (3), the officer—

(a) must produce his or her warrant of designation; and

(b) if called upon to do so, must state the provision or provisions of this Act under which he or she is entitled to enter the premises, building, or craft or exercise a power of detention.

(8) An immigration officer (including a constable exercising the powers of an immigration officer) who, in exercising a power described in subsection (3), orally makes a request, requirement, or demand of a person must also produce his or her warrant of designation if called upon to do so by the person.

(9) It is sufficient compliance with subsections (7)(a) and (8) if, in the case of a constable, he or she is in uniform or produces his or her badge or other evidence of being a constable.

Compare: 1987 No 74 s 133

Section 388(3)(b): amended, on 7 May 2015, by section 98(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 388(3)(c): amended, on 7 May 2015, by section 98(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 388(3)(d): amended, on 7 May 2015, by section 98(3) of the Immigration Amendment Act 2015 (2015 No 48).

Section 388(3)(f): replaced, on 7 May 2015, by section 98(4) of the Immigration Amendment Act 2015 (2015 No 48).

389 Immigration officers' functions and powers

(1) An immigration officer may be authorised to perform or exercise individual functions and powers, or functions and powers of 1 or more classes.

(2) Without limiting the way in which functions and powers are classified under subsection (1), functions and powers may be classified as follows:

(a) visa decision-making functions and powers, being the functions and powers set out in Part 3:

(b) entry permission decision-making functions and powers, being the functions and powers set out in Part 4:

(c) compliance and enforcement functions and powers, being the functions and powers set out in Part 8:

(d) the power of detention, being the power set out in section 312.

390 Designation of refugee and protection officers

(1) The chief executive may designate as refugee and protection officers the persons employed in the Department that the chief executive considers necessary for the purposes of this Act.

(2) A person designated as a refugee and protection officer may perform all the functions and exercise all the powers of a refugee and protection officer.

(3) Subsection (2) is subject to section 33(2)(b).

391 Revocation or lapsing of designations

(1) Every designation by the chief executive of a person as an immigration officer or a refugee and protection officer, or for any other purpose under this Act, is revocable in writing at will.

(2) Every authorisation of an immigration officer to exercise a power or perform a function is revocable in writing at will.

(3) Any such designation or authorisation—

(a) continues in force according to its tenor until it is revoked, even if the chief executive who made it has ceased to hold office, and continues to have effect as if made by the successor in office of that chief executive:

(b) is subject to such restrictions or conditions as the chief executive specifies in writing in the warrant of designation.

(4) A designation lapses when the person leaves the Department or the service or employment in respect of which the person was designated.

(5) A person whose designation has lapsed or been revoked must immediately surrender the warrant of designation to the chief executive.

Compare: 1987 No 74 s 133A

Relationship between this Act and Human Rights Act 1993

392 Relationship between this Act and Human Rights Act 1993

(1) The Human Rights Commission may perform, in relation to immigration matters, all of its functions (as described in section 5 of the Human Rights Act 1993), including—

(a) making public statements in relation to any matter affecting human rights:

(b) receiving and inviting representations from members of the public on any matter affecting human rights:

(c) inquiring generally into any matter, practice, or procedure if it appears to the Commission that the matter involves, or may involve, the infringement of human rights:

(d) reporting to the Prime Minister on any matter affecting human rights.

(2) However, despite anything in the Human Rights Act 1993,—

(a) no complaint may be made under that Act in respect of—

(i) the content or application of this Act or any regulations made under this Act; or

(ii) the content or application of any immigration instructions made in accordance with section 22:

(b) the Human Rights Commission may not, in relation to any matter referred to in paragraph (a),—

(i) bring any proceedings of a kind referred to in section 5(2)(i) of the Human Rights Act 1993; or

(ii) exercise in relation to any proceedings the powers conferred by section 5(2)(j) of that Act (which relates to applications to a court or tribunal to be appointed as intervener or counsel, or taking part in proceedings in any other way).

(3) This section recognises that immigration matters inherently involve different treatment on the basis of personal characteristics.

Compare: 1987 No 74 ss 149C, 149D

Fees, bonds, levies, etc

393 Fees and how they may be prescribed for purposes of section 400

(1) Without limiting the power to prescribe fees set out in section 400,—

(a) fees may be prescribed under that section in relation to any matter or service under or arising from this Act,—

(i) whether it be the acceptance for processing of, the processing of, or the decision on any application, request, or appeal:

(ii) whether or not it relates to a formal process:

(iii) whether or not any other fee is payable in respect of some other aspect of the same matter:

(iv) whether or not it relates to a visa, special direction, waiver, or other exercise of powers under this Act:

(b) the regulations may prescribe any manner in which fees may or may not be payable:

(c) the regulations may prescribe to whom the fees or charges are payable and, in the case of any fees or charges payable to the Department, may provide for, or allow, the fee or charge to be payable to a third person on behalf of the Department:

(d) the regulations may prescribe fees payable by a third party (not being an applicant for, or a holder of, a visa or entry permission) in connection with a status or approval that, under the immigration instructions, the third party requires, or wishes to obtain or keep, where that status or approval is relevant to applicants for a visa or entry permission.

(2) Fees may apply to an individual person or application, or to a group of persons or applications, or otherwise.

(3) Fees may not be imposed on claimants for any matter relating to refugee status or protection status.

(4) Fees may be prescribed in a way, or at a level or levels, or using 1 or more methods of calculation, that reflects the variable nature of the costs or potential costs that give rise to the need for each fee, and the range of factors that influence those costs.

(5) Without limiting subsection (4), the fees prescribed may—

(a) differ depending on whether a special or urgent service is provided:

(b) include more than 1 level of fee for the same service provided in different ways, or provided in or in respect of different places:

(c) differ for otherwise similar services provided in different ways:

(d) differ for otherwise similar services provided to different categories of person:

(e) differ depending on the amount of service required or the components of the service required for the particular person or class of person:

(f) differ depending on whether a group of people (including a family group) is requesting or obtaining the services in question:

(g) differ depending on whether an agent is used to deliver or help deliver the service concerned.

(6) Without limiting the way in which fees may be set, a fee may be set at a level or in a way that—

(a) is determined by calculations that involve an averaging of costs or potential costs:

(b) takes into account costs or potential costs of services that are not to be provided directly to the person who pays the fee but that are an indirect or potential cost arising from the delivery of the service in question to a class of persons or all persons who use the service.

(7) A fee is payable at the time prescribed in respect of a particular service, whether that time is before, during, or after completion of the relevant service.

(8) In the case of services to be provided outside New Zealand or in respect of a person outside New Zealand,—

(a) a fee may be set in New Zealand dollars or in a foreign currency; and

(b) if the fee is set in New Zealand dollars, the method of determining the amount payable at any time in currency other than New Zealand dollars is to be determined by the chief executive.

(9) A fee may also be required by the regulations in question to be paid in New Zealand dollars only.

(10) All fees prescribed under this Act and received by the Department or any other government department must be paid into a Departmental Bank Account.

Compare: 1987 No 74 s 148A

Section 393(1)(d): inserted, on 7 May 2015, by section 99(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 393(10): amended, on 7 May 2015, by section 99(2) of the Immigration Amendment Act 2015 (2015 No 48).

394 Other charges

(1) Nothing in section 393 or 396 prevents the Department from charging persons for any of the services the Department provides in relation to the administration of this Act, other than services to which a fee applies under the other provisions of this Act.

(2) Subsection (1) is subject to subsection (7).

(3) Without limiting subsection (1), and for the avoidance of doubt, the Department may—

(a) operate a telephone information service for which each caller pays according to their usage or on some averaged basis:

(b) charge persons for the cost of mailing or couriering information to them (including transcripts and recordings of hearings), or the cost of moving,

at the person's request, the administration of a matter relating to the person from one office of the Department to another:

(c) charge for the cost of written material, unless that material is required by any Act or by regulations made under this Act to be provided free of charge:

(d) charge for the cost of transcripts or recordings of hearings, unless that material is required by any Act to be provided free of charge:

(e) charge for access to any Internet site, or for information or services provided by any Internet site, operated by the Department:

(f) charge for access to any library or research services provided in relation to immigration, refugee, or protection matters:

(g) charge any person for services requested by (and provided to) that person in relation to immigration matters, other than services provided in an immigration control area:

(h) charge any person for the supply of forms to the person in quantity, where it is apparent that the forms are not for the person's own personal use.

(4) All such charges received by the Department must be paid into a Departmental Bank Account.

(5) Nothing in subsection (1) or (3)(g) authorises the charging of any person who operates a place that is, or contains, an immigration control area for services provided in relation to immigration or refugee or protection matters.

(6) Nothing in subsection (3)(g) affects the ability to recover costs under section 398.

(7) If the Department is not the department referred to in clause 5 of Schedule 2, the department that is referred to in that clause may, in relation to appeals to or matters before the Tribunal,—

(a) charge persons for the cost of mailing or couriering information to them (including information that is transcripts or recordings of hearings):

(b) charge for the cost of transcripts and recordings of hearings, or copies of records and papers, of the Tribunal (unless the material is required by any enactment to be provided free of charge):

(c) charge for access to any library or research services provided in relation to immigration, refugee, or protection matters:

(d) charge a person for the supply of forms to the person in quantity, if it is apparent that the forms are not for the person's own personal use:

(e) charge for the reasonable costs of providing any other service associated with an appeal or matter before the Tribunal.

(8) All charges received by a department under subsection (7) must be paid into a Departmental Bank Account.

Compare: 1987 No 74 s 148C

Section 394(4): amended, on 7 May 2015, by section 100(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 394(8): amended, on 7 May 2015, by section 100(2) of the Immigration Amendment Act 2015 (2015 No 48).

395 Exemptions and refunds

(1) Regulations made under this Act may provide for exemptions from or refunds of any fee or charge payable under this Act, in whole or in part, in any class of case.

(2) The Minister may by special direction provide for an exemption from or refund of any prescribed fee or charge in whole or in part.

Compare: 1987 No 74 s 149

396 Imposition of bonds

(1) This section applies in any case where a bond may be imposed under this Act.

(2) The amount of any bond is to be at a level determined or authorised by immigration instructions.

(3) Different levels of bond, or different methods of determining levels of bond, may be determined or authorised in respect of different categories of person.

(4) Without limiting the manner in which persons may be categorised, categories of persons may be determined by having regard to the different regions of the world where their countries of origin or nationality are situated and the costs of travel or repatriation to those regions or countries.

(5) The Minister or an immigration officer must specify—

(a) the conditions in respect of which the bond is paid (which must relate to or be based on requirements of the relevant immigration instructions, if appropriate, or on other requirements and obligations imposed by or under this Act, including conditions of the relevant visa); and

(b) the situations in which it may be refunded or forfeited, whether in whole or in part.

(6) Immigration instructions may—

(a) require any bond or class of bond to be paid in New Zealand dollars only:

(b) require any refund of a bond or class of bond to be made in New Zealand dollars only (whether or not the bond itself was required to be paid in New Zealand dollars).

(7) A bond required in respect of any type of matter is payable at the time specified for that class of matter in immigration instructions, and may be payable

either by the person concerned or by any other class of person specified in the instructions.

(8) Immigration instructions may provide for exemptions from or refunds of any bond payable in any class of case.

(9) The Minister may by special direction provide for an exemption from or refund of any bond, in whole or in part.

397 Refund or forfeiture of bond

(1) The Minister or an immigration officer may cause a bond imposed under this Act to be forfeited.

(2) Forfeiture of a bond is at the discretion of the Minister or an immigration officer, who must exercise the discretion by taking into account—

(a) the reason the bond was imposed; and

(b) the extent to which the conditions of the bond have been met or breached; and

(c) any explanation given as to the breach of the bond conditions; and

(d) the estimated cost to the Crown of the breach.

(3) A person who is eligible for the refund of a bond must apply for the refund within 12 months of the bond becoming refundable, or the bond is forfeit to the Crown.

(4) A bond paid must be held in trust by the Department until refunded or forfeited.

(5) No interest is payable on a bond to the person who paid it. The chief executive may apply any interest towards the costs of administering the bond system, and any surplus interest must be paid into a Crown Bank Account.

(6) In the case of a bond imposed in relation to a temporary entry class visa, no refund may be made until the person in question either is no longer in New Zealand or is granted a residence class visa.

(7) A refund of a bond must be paid either to the person who paid it or to a person authorised by that person to receive it.

(8) If all or any part of a bond is forfeited, the Department must pay the amount forfeited into a Crown Bank Account.

(9) No bond may be imposed on any claimant for any matter relating to recognition as a refugee or a protected person, and any bond imposed upon a person before that person became a claimant must be refunded if the person is subsequently recognised as a refugee or a protected person.

Compare: 1987 No 74 s 148B

398 Costs of deportation or repatriation

(1) Subject to this section and to any order of a court under section 355(6), all costs incurred by the Crown in deporting or repatriating any person from New Zealand may be paid from a Crown Bank Account.

(2) Subsection (3) applies if—

(a) a person has been or is to be deported or repatriated from New Zealand; and

(b) that person has in New Zealand a spouse, civil union partner, de facto partner, or dependent child; and

(c) the Minister is satisfied that the effect of the deportation or repatriation has been or will be to separate the person from the spouse, partner, or dependent child.

(3) The Minister may provide the person or the person's spouse or partner with such assistance as the Minister thinks fit for the purpose of reuniting the spouse, partner, or dependent child with the person in the country to which the person has been or is to be deported or repatriated, and any such assistance may include the grant of a sum out of a Crown Bank Account to meet all or part of the travelling or other costs that will be incurred in any such exercise.

(4) The costs incurred by the Crown in deporting or repatriating a person are recoverable as a debt due to the Crown, and those costs include (without limitation) costs incurred—

(a) in locating, detaining, transporting, and maintaining the person pending his or her deportation or repatriation; and

(b) in paying for travel for the person outside New Zealand.

(5) The costs recoverable by the Crown may be the actual costs (determined after the deportation or repatriation has been effected), or an estimate of those costs determined by,—

(a) in the case of deportation costs only, an immigration officer, in which case the estimate must be noted on the deportation order along with a statement requiring those costs to be paid; or

(b) in the case of either deportation costs or repatriation costs, a court of competent jurisdiction, on application by the Minister or an immigration officer.

(6) Where the estimated costs of deportation or repatriation are recovered from a person, if the amount recovered exceeds the actual costs of the deportation or repatriation, the excess must, on application by the person in the prescribed manner, be refunded to the person.

(6A) If the person deported or repatriated is under 18 years of age and not married or in a civil union, the costs of his or her deportation or repatriation are recoverable from the person's parent or guardian.

(7) Any costs recovered under this section must be paid into a Crown Bank Account.

(8) Nothing in this section or in section 55, 118, or 355 authorises the Crown to recover any particular cost more than once.

Compare: 1987 No 74 s 148

Section 398(4): replaced, on 7 May 2015, by section 101 of the Immigration Amendment Act 2015 (2015 No 48).

Section 398(5): replaced, on 7 May 2015, by section 101 of the Immigration Amendment Act 2015 (2015 No 48).

Section 398(6): replaced, on 7 May 2015, by section 101 of the Immigration Amendment Act 2015 (2015 No 48).

Section 398(6A): inserted, on 7 May 2015, by section 101 of the Immigration Amendment Act 2015 (2015 No 48).

399 Immigration levy

(1) Any regulations made under section 400 may provide for the imposition and collection of an immigration levy on applicants for a visa.

(2) The purpose of the levy is to fund, or contribute to the funding of,—

(a) the provision of programmes intended to assist the successful settlement of migrants or categories of migrants; and

(b) the carrying out of research into settlement issues and the impacts of immigration; and

(c) the infrastructure required for, and the operation of, the immigration system, including (without limitation) for the following purposes:

(i) establishing and verifying the identity of persons:

(ii) managing risk to the integrity of the immigration system:

(iii) managing immigration risk to the safety and security of New Zealand:

(iv) managing compliance with the immigration system; and

(d) activities aimed at attracting migrants to New Zealand; and

(e) the Immigration Advisers Authority, to the extent that it is not otherwise funded.

(3) Regulations made for the purposes of this section may—

(a) specify the categories or classes of applicants who are liable to pay the immigration levy:

(b) prescribe the amount or method of calculation of the levy:

(c) prescribe different amounts or methods of calculation of the levy in respect of different categories or classes of applicants:

(d) provide for exemptions from or refunds of the levy, in whole or in part, in any class of case:

(e) provide for the manner of collection of the levy, including provision for the relevant amount of levy to be deposited with the chief executive.

(3A) The Minister may, by special direction,—

(a) exempt any person or persons from the obligation to pay all or part of the levy; or

(b) refund all or part of a levy paid.

(4) All levy money collected under this section must be paid into a Crown Bank Account.

(5) Not later than 1 October in each year, the chief executive must provide to the Minister a report setting out, in respect of the financial year ending on the preceding 30 June,—

(a) the amount collected through the immigration levy; and

(b) how the amount of the immigration levy was applied.

(6) The Minister must present the report to the House of Representatives not later than 15 sitting days after its receipt.

(7) In this subsection and subsection (8),—

commencement date means that date on which section 102 of the Immigration Amendment Act 2015 came into force

migrant levy means the levy payable under this section immediately before the commencement date

relevant person means a person who, immediately before the commencement date, was a person who—

(a) had applied for, but had not yet been granted, a visa; and

(b) would have been liable to pay the migrant levy if the visa had been granted before the commencement date.

(8) On and after the commencement date,—

(a) a relevant person is not liable to pay, in respect of an application for a visa made before the commencement date, the immigration levy imposed by regulations that apply after the commencement date; but

(b) if the relevant person is granted a visa on the basis of that application, he or she is liable to pay the migrant levy that would have been payable if section 102 of the Immigration Amendment Act 2015 had not come into force.

Compare: 1987 No 74 s 149B

Section 399 heading: amended, on 7 December 2015, by section 102(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 399(1): amended, on 7 December 2015, by section 102(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 399(2)(b): amended, on 7 December 2015, by section 102(3) of the Immigration Amendment Act 2015 (2015 No 48).

Section 399(2)(c): inserted, on 7 December 2015, by section 102(4) of the Immigration Amendment Act 2015 (2015 No 48).

Section 399(2)(d): inserted, on 7 December 2015, by section 102(4) of the Immigration Amendment Act 2015 (2015 No 48).

Section 399(2)(e): inserted, on 7 December 2015, by section 102(4) of the Immigration Amendment Act 2015 (2015 No 48).

Section 399(3)(a): replaced, on 7 December 2015, by section 102(5) of the Immigration Amendment Act 2015 (2015 No 48).

Section 399(3)(c): amended, on 7 December 2015, by section 102(6) of the Immigration Amendment Act 2015 (2015 No 48).

Section 399(3)(e): amended, on 7 December 2015, by section 102(7) of the Immigration Amendment Act 2015 (2015 No 48).

Section 399(3A): inserted, on 7 December 2015, by section 102(8) of the Immigration Amendment Act 2015 (2015 No 48).

Section 399(5)(a): amended, on 7 December 2015, by section 102(9) of the Immigration Amendment Act 2015 (2015 No 48).

Section 399(5)(b): amended, on 7 December 2015, by section 102(9) of the Immigration Amendment Act 2015 (2015 No 48).

Section 399(7): inserted, on 7 December 2015, by section 102(10) of the Immigration Amendment Act 2015 (2015 No 48).

Section 399(8): inserted, on 7 December 2015, by section 102(10) of the Immigration Amendment Act 2015 (2015 No 48).

Regulations

400 Regulations generally

The Governor-General may, by Order in Council, make regulations for 1 or more of the following purposes:

(a) prescribing the manner of application and any procedural matters in relation to any applications for visas or other applications under this Act:

(ab) providing that the chief executive may require that certain applications for visas must be made electronically, in which case the chief executive must maintain a list of such requirements and the regulations must prescribe how that list is to be publicly available:

(b) prescribing other matters in respect of visas or expressions of interest, including matters provided for in section 401:

(c) prescribing requirements and procedures in respect of arrivals in and departures from New Zealand, including matters provided for in section 402:

(d) prescribing procedures to be followed for the purposes of Part 5, or such other matters as are contemplated by or necessary for giving full effect to the Refugee Convention, including matters provided for in section 403:

(e) prescribing procedures and other matters in respect of reconsiderations, appeals, and reviews under Part 7:

(f) prescribing fees and charges in respect of any matters under this Act, and providing for exemptions from or refunds of any fees and charges, including matters provided for in sections 393 and 395:

(g) prescribing infringement offences against this Act in the case of carriers, or persons in charge, of craft:

(h) setting the infringement fees payable in respect of infringement offences, which fees—

(i) may differ for different infringement offences; and

(ii) may differ for different classes of person; and

(iii) in the case of a person in charge of a craft, may not exceed $2,500; and

(iv) in the case of a carrier of a craft, may not exceed $5,000:

(i) prescribing forms for the purposes of this Act, including the form of infringement notices and infringement offence reminder notices:

(j) prescribing offences in respect of the contravention of, or non-compliance with, any regulations made for the purposes of this Act, and the maximum amounts of fines that may be imposed in respect of those offences (which maximum amounts may not exceed $5,000):

(k) providing for transitional and related matters, as provided in section 472:

(ka) providing requirements, which may differ from the requirements of sections 386A to 387A, for the manner of service or giving of notices and other documents in specific situations or circumstances:

(l) exempting classes of persons from the requirement to allow biometric information to be collected from them:

(m) providing for such other matters as are contemplated by or necessary for giving effect to the provisions of this Act and for its due administration.

Section 400(ab): inserted, on 7 May 2015, by section 103(1) of the Immigration Amendment Act 2015 (2015 No 48).

Section 400(j): amended, on 7 May 2015, by section 103(2) of the Immigration Amendment Act 2015 (2015 No 48).

Section 400(ka): inserted, on 7 May 2015, by section 103(3) of the Immigration Amendment Act 2015 (2015 No 48).

Section 400(l): not yet in force.

Section 400(l): amended, on 7 May 2015, by section 103(4) of the Immigration Amendment Act 2015 (2015 No 48).

401 Regulations relating to visas and expressions of interest

Without limiting section 400, regulations made under that section may—

(a) prescribe the situations under which a visa of a particular class and type is deemed under this Act to be granted to a person:

(b) prescribe who may apply for a residence class visa—

(i) at a place designated by the chief executive under section 383; or

(ii) on arrival in New Zealand at an immigration control area or other prescribed place:

(c) classify persons to whom a transit visa waiver applies for the purposes of section 86:

(d) prescribe 1 or more transit periods, and different periods may be prescribed for the holders of transit visas and persons to whom a transit visa waiver applies:

(e) prescribe the manner in which an expression of interest must be made for the purposes of section 92(1).

Section 401(d): replaced, on 6 November 2015, by section 104 of the Immigration Amendment Act 2015 (2015 No 48).

402 Regulations relating to procedures and requirements in relation to arrivals in and departures from New Zealand

Without limiting the generality of section 400, regulations made under that section may—

(a) prescribe the information that must be obtained for the purposes of section 96(2)(a) from every person who intends to board a commercial craft for the purposes of travelling to or from New Zealand:

(b) prescribe the information that must be provided to the chief executive for the purposes of section 96(2)(b), which may include, without limitation,—

(i) a description of the location of the information prescribed for the purposes of section 102(2); and

(ii) if applicable, the electronic address for the information referred to in subparagraph (i):

(c) exempt carriers, and persons in charge, of craft from any of the obligations under section 101 in relation to craft en route to or arriving in New Zealand, and specify any requirements that apply in relation to an exemption:

(d) prescribe the documentation that persons en route to New Zealand must have for the purposes of section 101(1)(a):

(e) prescribe the documents that may be required to be produced to an immigration officer under section 101(1)(b)(i):

(f) prescribe the information that must be provided for the purposes of section 102(2):

(g) prescribe the manner and place in which, and the time within which, a person must present himself or herself on arrival in New Zealand:

(h) exempt persons arriving in New Zealand from any of the obligations under section 103, and specify any requirements that apply in relation to an exemption:

(i) prescribe the manner of application for entry permission, including the provision of any information, documents, or other details (if any) required:

(j) prescribe the situations under which entry permission is deemed under this Act to be granted to a person:

(k) prescribe requirements as to the establishment of a person's identity as a New Zealand citizen for the purposes of section 99 or 103:

(l) exempt New Zealand citizens from the requirement to allow a photograph to be taken in any class of case:

(m) prescribe documents that may be demanded by an immigration officer for the purposes of section 106:

(n) exempt carriers, and persons in charge, of craft from any of the obligations under section 118 in relation to craft leaving New Zealand, and specify any requirements that apply in relation to an exemption:

(o) prescribe classes of persons in respect of whom details must be reported for the purposes of section 118(1)(c):

(p) exempt persons leaving New Zealand from any of the obligations under section 119, and specify any requirements that apply in relation to an exemption:

(q) prescribe the place at which a person leaving New Zealand must present himself or herself:

(r) prescribe the information and documentation required from persons leaving New Zealand.

Section 402(a): amended, on 28 September 2017, by section 279 of the Intelligence and Security Act 2017 (2017 No 10).

Section 402(b): replaced, on 7 May 2015, by section 105 of the Immigration Amendment Act 2015 (2015 No 48).

403 Regulations in respect of refugee and protection matters

(1) Without limiting the generality of section 400, regulations made under that section may, in relation to refugee and protection matters,—

(a) specify the manner in which any claim, appeal, or application is to be made:

(b) *[Repealed]*

(c) provide for the availability and use of interpreters:

(d) provide for matters relating to communications with claimants or other persons concerned:

(e) specify the information that must be supplied to claimants or other persons concerned, including information concerning their rights and concerning procedures under Part 5:

(f) make provision for the representation of minors:

(g) make provision for representation generally:

(h) specify the circumstances in which interviews must be held and when they need not be held:

(i) specify the periods, or minimum or maximum periods, within which or before or after which certain things must be done or may not be done:

(j) specify the obligations of claimants or other persons concerned as to the provision of contact details, information, and documents:

(k) specify the manner in which a claim or other matter may be withdrawn:

(ka) specify, by reference to 1 or both of the following matters, the claims that a refugee and protection officer must not process or determine or make a decision on under sections 136 to 138:

(i) common circumstances or common characteristics of the claims:

(ii) common circumstances or common characteristics of the claimants making the claims:

(l) provide for any special matters relating to the handling of claims, appeals, or other matters when the claimant or other person concerned is in custody:

(m) specify the procedures to be followed in relation to claims, appeals, and other matters not completed before the commencement of this section.

(2) No regulations may be made under section 400 in respect of the matters specified in subsection (1)(ka) of this section unless the Minister—

(a) has recommended the making of the regulations to the Governor-General; and

(b) before doing so, is satisfied that the regulations are necessary for 1 or both of the following reasons:

(i) there are problems in accessing information or assessing information that is relevant to determining or making a decision on the claims to be specified in the regulations:

(ii) the circumstances to which the claims to be specified in the regulations relate, or the circumstances of the claimants making those claims, are otherwise of a nature, or subject to such a degree of change or uncertainty, that determination or decision of the claims under sections 136 to 138 is unlikely to produce a robust outcome.

(3) Regulations made under section 400 in respect of the matters specified in subsection (1)(ka) of this section—

(a) are deemed to be revoked on the date that is 6 months after their commencement or on any earlier date specified in the regulations; and

(b) have no continuing effect after the date on which they expire.

Section 403(1)(b): repealed, on 7 May 2015, by section 106 of the Immigration Amendment Act 2015 (2015 No 48).

Section 403(1)(ka): inserted, on 19 June 2013, by section 16(1) of the Immigration Amendment Act 2013 (2013 No 39).

Section 403(2): inserted, on 19 June 2013, by section 16(2) of the Immigration Amendment Act 2013 (2013 No 39).

Section 403(3): inserted, on 19 June 2013, by section 16(2) of the Immigration Amendment Act 2013 (2013 No 39).

403A Regulations made on recommendation of Minister

(1) Regulations made under this Part may be made only on the recommendation of the Minister, except as provided in subsection (2).

(2) Any regulations made under the following provisions may, if they relate to appeals or other matters in the Tribunal, be made only on the recommendation of the Minister for Courts, after consultation with the Minister:

(a) section 400(d):

(b) section 400(e):

(c) section 400(f):

(d) section 400(i).

Section 403A: inserted, on 7 May 2015, by section 107 of the Immigration Amendment Act 2015 (2015 No 48).

Part 12
Repeals, transitional provisions, saving provisions, and related matters

Subpart 1—Repeals and related matters

404 Immigration Act 1987 repealed

The Immigration Act 1987 (1987 No 74) is repealed.

405 Regulations made under Immigration Act 1987 revoked

The following regulations are revoked:

(a) Immigration (Refugee Processing) Regulations 1999 (SR 1999/285):

(b) Immigration Regulations 1999 (SR 1999/284):

(c) Immigration (Special Regularisation) Regulations 2000 (SR 2000/187):

(d) Immigration (Transit Visas) Regulations 2008 (SR 2008/38).

406 Consequential amendments and repeals

(1) The enactments listed in Schedule 3 are amended in the manner indicated in that schedule.

(2) The regulations, rules, and orders listed in Schedule 4 are amended in the manner indicated in that schedule.

(3) The following Acts are repealed:

(a) Air Facilitation Act 1993 (1993 No 6):

(b) Air Facilitation (Domestic Passengers and Cargo) Act 1994 (1994 No 100).

407 Immigration Act 1987 continues in relation to certain matters and for certain purposes

(1) To avoid doubt, despite the repeal of the former Act by section 404 of this Act, sections 17, 18, and 19 of the Interpretation Act 1999—

(a) provide that the repeal of the former Act does not affect certain matters; and

(b) continue the application of the former Act for certain purposes, subject to any provision in subpart 2 of this Part that expressly provides otherwise.

(2) Accordingly, but without limiting subpart 2 of this Part, in relation to an immigration matter, a person who, immediately before the commencement of section 404 of this Act,—

(a) is unlawfully in New Zealand continues to have an obligation to leave New Zealand:

(b) is detained under the former Act continues to be lawfully detained:

(c) is subject to a removal order or deportation order under the former Act continues to be subject to that order.

408 Appeals body members not entitled to compensation

Nothing in this Act entitles a member of an appeals body to any compensation—

(a) in respect of the repeal of the former Act by section 404 of this Act; or

(b) for any fees or allowances that would otherwise be payable for the remainder of the member's term of appointment affected by the repeal.

Subpart 2—Transitional and savings provisions

Government immigration and residence policy

409 Government immigration and Government residence policy under sections 13A and 13B of former Act to be treated as immigration instructions

(1) On and from the commencement of section 404 of this Act, Government immigration policy published under section 13A of the former Act that is in force immediately before that commencement must be treated as immigration instructions for the purposes of this Act, and this Act applies accordingly with any necessary modifications.

(2) On and from the commencement of section 404 of this Act, Government immigration policy published under section 13A of the former Act and relating to the issue of temporary visas or limited purpose visas, or the granting of temporary permits or limited purpose permits, that is in force immediately before that commencement must be treated as temporary entry instructions for the purposes of this Act, and this Act applies accordingly with any necessary modifications.

(3) Subsection (2) applies regardless of whether the policy would affect eligibility for, or otherwise relate to, the issuing of a residence visa or the granting of a residence permit.

(4) On and from the commencement of section 404 of this Act, Government immigration policy published under section 13A of the former Act and relating to the issue of transit visas that is in force immediately before that commencement must be treated as transit instructions, and this Act applies accordingly with any necessary modifications.

(5) On and from the commencement of section 404 of this Act, Government residence policy under section 13B of the former Act that is in force immediately before that commencement must be treated as residence instructions for the purposes of this Act, and this Act applies accordingly with any necessary modifications.

(6) Without limiting subsections (1) to (5),—

(a) a reference to a visa in Government immigration policy or Government residence policy to which this section applies must be read as a reference to a visa that allows the person to travel to New Zealand; and

(b) a reference to a permit in Government immigration policy or Government residence policy to which this section applies must be read as a reference—

(i) to a visa that allows a person to stay in New Zealand; and

(ii) to the grant of entry permission in relation to the person.

410 Government policy on lapsing of applications for visas and permits under former Act to be treated as immigration instructions for applications to which section 412 applies

(1) On and from the commencement of section 404 of this Act, Government policy published under section 13A(2) of the former Act and relating to rules and criteria for the lapsing of applications (as described in section 13BB of the former Act) that is in force immediately before that commencement must be treated as immigration instructions certified under section 24 of this Act for the purposes of determining whether an application made before the commencement of section 404 has lapsed, and this Act applies accordingly with any necessary modifications.

(2) Without limiting subsection (1), any relevant time periods specified in the immigration instructions must be calculated including any time that has elapsed before the commencement of section 404 of this Act.

General instructions of chief executive

411 General instructions given under section 13BA of former Act treated as general instructions under section 26(4) of this Act

On and from the commencement of section 404 of this Act, general instructions given by the chief executive under section 13BA of the former Act that are in force immediately before that commencement—

(a) must be treated for the purposes of this Act as general instructions given by the chief executive under section 26(4) of this Act, and this Act applies accordingly with any necessary modifications; and

(b) continue in force according to their general tenor, subject to any necessary modifications.

Existing applications, expressions of interest, and invitations

412 Existing applications for visas and permits

(1) An application for a visa or a permit of a type described in the first column of the following table (the **former type**) that was made under the former Act but not determined before the commencement of section 404 of this Act must be treated as an application made under this Act for a visa of the type described opposite the former type in the second column of the following table:

Application under former Act	To be treated as application under this Act
Residence visa	Resident visa (but determined in accordance with the Government residence policy in force at the time the application was made under the former Act)
Residence permit	Resident visa (but determined in accordance with the Government residence policy in force at the time the application was made under the former Act)
Temporary visa	Temporary visa

Application under former Act	To be treated as application under this Act
Work permit	Temporary visa that allows the holder to work in New Zealand (including the territorial sea) or the exclusive economic zone of New Zealand
Student permit	Temporary visa that allows the holder to study in New Zealand
Visitor permit	Temporary visa that does not allow the holder to work in New Zealand (including the territorial sea) or the exclusive economic zone of New Zealand or study unless the conditions of the permit granted under the former Act allow work or study
Limited purpose visa	Limited visa
Limited purpose permit	Limited visa
Transit visa	Transit visa
Temporary permit to which section 27A of the former Act applied	Limited visa to which section 83 applies
Returning resident visa by person other than New Zealand citizen	Variation of travel conditions of resident visa under section 51
Returning resident visa by New Zealand citizen	Endorsement under section 384(4)

(2) For the purposes of subsection (1), this Act applies accordingly with any necessary modifications, unless—

(a) expressly stated otherwise in the table; or

(b) any special direction directs otherwise; or

(c) any regulations made under section 472 or immigration instructions made under section 473 require otherwise.

413 Expressions of interest in residence under section 13D of former Act

(1) An expression of interest submitted under section 13D of the former Act before the commencement of section 404 of this Act but in relation to which no decision has been made as at the date of that commencement on whether to issue an invitation to apply must be treated as if it were an expression of interest made under section 92 of this Act for a visa of the appropriate type (as set out in the table in section 412(1)), and this Act applies accordingly, with any necessary modifications.

(2) For the purposes of determining whether an expression of interest to which subsection (1) applies is no longer current, the period of time concerned must be calculated including any time that has elapsed before the commencement of section 404 of this Act.

414 Invitations to apply for residence under section 13E of former Act

(1) An invitation to apply under section 13E of the former Act that was made before the commencement of section 404 of this Act and is current immediately

before that commencement must be treated as if it were an invitation to apply made under section 94 of this Act for a visa of the appropriate type (as set out in the table in section 412(1)), and this Act applies accordingly, with any necessary modifications.

(2) For the purposes of determining whether a residence application has been made in the stipulated time frame following the issue of an invitation to apply to which subsection (1) applies, the period of time must be calculated including any time that has elapsed before the commencement of section 404 of this Act.

Existing visas and permits

415 Holder of visa or permit under former Act deemed to be holder of visa and (if applicable) granted entry permission under this Act

(1) A person who, immediately before the commencement of section 404 of this Act, held a visa or permit under the former Act (or was deemed to hold a permit under the former Act) of a type described in the first column of Schedule 5 is deemed on and from the commencement of section 404 of this Act to hold a visa under this Act of the corresponding type described in the second column of Schedule 5 for the duration and subject to the conditions (if any) described in the second column, and this Act applies accordingly with any necessary modifications.

(2) In addition, a person who, immediately before the commencement of section 404,—

(a) held a permit under the former Act (or was deemed to hold a permit under the former Act) is deemed on and from that commencement to have been granted entry permission under this Act, and this Act applies accordingly with any necessary modifications:

(b) held a visa (other than a transit visa) and a permit under the former Act is deemed on and from that commencement to hold under this Act a single visa (as determined under Schedule 5) for the duration and subject to the conditions (if any) of the visa and the permit combined, and this Act applies accordingly with any necessary modifications.

(3) Without limiting subsection (1) or (2),—

(a) the period of currency of a visa deemed to be held under this Act by this section must be calculated including any time that has elapsed before the commencement of section 404 of this Act:

(b) the transit period for any person deemed to hold a transit visa under subsection (1) must be calculated including any time that has elapsed in which the person was in New Zealand before the commencement of section 404 of this Act.

(4) Nothing in this section applies to a person to whom section 432 or 438 of this Act applies.

416 Returning resident's visa held by New Zealand citizen under former Act indication of entitlement

Despite section 404 of this Act, an immigration officer may treat a returning resident's visa (within the meaning of section 2(1) of the former Act) held by a New Zealand citizen as an indication that the person is entitled to travel and enter New Zealand as a New Zealand citizen until the expiry of the passport in which the visa is endorsed.

417 Persons exempt from holding permit under former Act deemed to be holders of temporary visa or resident visa

(1) A person in New Zealand who immediately before the commencement of section 404 of this Act was exempt from the requirement to hold a permit under section 11 of the former Act is deemed, on and from that commencement, to—

(a) hold a temporary visa under this Act—

(i) that is current for the period for which the exemption would have applied under section 11 of the former Act (calculated including any time that has elapsed before the commencement of section 404 of this Act); and

(ii) subject to conditions that allow the purpose for which the exemption applied to be pursued; and

(b) have been granted entry permission on the basis of the temporary visa.

(2) A person in New Zealand who immediately before the commencement of section 404 of this Act was exempt from the requirement to hold a permit by special direction under section 12(2) of the former Act is deemed, on and from that commencement, to—

(a) hold a temporary visa under this Act for the period (calculated including any time that has elapsed before the commencement of section 404 of this Act) and subject to the conditions (if any) specified in the special direction; and

(b) have been granted entry permission on the basis of the temporary visa.

(3) A person in New Zealand who immediately before the commencement of section 404 of this Act was exempt from the requirement to hold a permit under Part 2 of Schedule 1 of the Immigration Regulations 1999 is deemed on and from that commencement to hold a resident visa under this Act allowing stay in New Zealand only.

(4) For the purposes of this section, this Act applies accordingly with any necessary modifications.

Arrivals and departures

418 Responsibilities of carrier, and person in charge, of commercial craft before it departs from another country to travel to New Zealand

(1) On and from the commencement of section 404 of this Act, a notification to a carrier, or a person in charge, of a commercial craft by the chief executive under section 125AA(1) of the former Act that is in force immediately before that commencement must be treated for the purposes of this Act as a notification by the chief executive under section 96(1) of this Act, and this Act applies accordingly with any necessary modifications.

(2) On and from the commencement of section 404 of this Act, an exemption under section 125AA(3) of the former Act that is in force immediately before that commencement continues in force for the purposes of section 96(3) of this Act, according to its tenor, until revoked by the chief executive.

(3) On and from the commencement of section 404 of this Act, a system approved under section 125AA(5) of the former Act that is in force immediately before that commencement must be treated for the purposes of this Act as an approved system (within the meaning of section 4 of this Act), and this Act applies accordingly with any necessary modifications.

419 Decision by chief executive about person boarding craft for purpose of travelling to New Zealand

(1) On and from the commencement of section 404 of this Act, a decision made by the chief executive under section 125AB of the former Act that is in force immediately before that commencement must be treated for the purposes of this Act as a decision made by the chief executive under section 97(1) of this Act, and this Act applies accordingly with any necessary modifications.

(2) On and from the commencement of section 404 of this Act, a notification to a carrier, or a person in charge, of a commercial craft by the chief executive under section 125AB(2) of the former Act that is in force immediately before that commencement must be treated for the purposes of this Act as a notification by the chief executive under section 97(2) of this Act, and this Act applies accordingly with any necessary modifications.

420 Information requirements for carrier, and person in charge, of commercial craft

(1) This section applies to a person to whom section 125AA of the former Act applies if, before the commencement of section 404 of this Act,—

(a) the chief executive made a request to the person for information under section 125AD of the former Act; and

(b) the 24-hour period referred to in subsection (4) of that section had not expired.

(2) The obligations under section 125AD(3) and (4) of the former Act continue to apply to the person until the end of the 24-hour period referred to in subsection (1)(b) as if those provisions had not been repealed by section 404 of this Act.

(3) To avoid doubt, the chief executive may also request information from the person under section 102 of this Act if the craft in fact arrives after the commencement of section 404 of this Act.

421 Reporting obligations of carriers, and persons in charge, of craft leaving New Zealand

(1) This section applies in respect of a person if,—

(a) before the commencement of section 404 of this Act, the person was on board a craft when it arrived in New Zealand; and

(b) on arrival, the person was exempt under section 11(1)(c), (d), or (e) of the former Act from the requirement to hold a permit to be in New Zealand; and

(c) on or after the commencement of section 404 of this Act, the person is not aboard the craft when the craft is leaving New Zealand.

(2) The obligations of the carrier, and the person in charge, of the craft to report to an immigration officer under section 118(1)(c) of this Act apply in respect of a person described in subsection (1) as if the person were a member of the crew or a person of a class prescribed for the purposes of that section, as the case may be.

422 Obligations of carriers of craft leaving New Zealand to provide passage

(1) This section applies to a carrier of a craft if, before the commencement of section 404 of this Act,—

(a) a person,—

(i) not being the holder of a visa under the former Act, was on board the craft, or any other craft operated by the carrier, when it arrived in New Zealand and neither was exempt under that Act from the requirement to hold a permit nor was granted a permit or pre-cleared permit on or before arrival in New Zealand; or

(ii) arrived in New Zealand as a member of the crew of the craft, or any other craft operated by the carrier, and, otherwise than in accordance with the former Act, remained in New Zealand after the departure of that craft; and

(b) the person has not left New Zealand.

(2) On and from the commencement of section 404 of this Act, the obligations of the carrier under section 118(2)(a) of this Act to provide passage from New Zealand at the cost in all respects of the carrier, or to bear the cost of passage from New Zealand by any other carrier, apply in respect of the person as if the person were a person described in section 118(2)(a) of this Act.

(3) On and from the commencement of section 404 of this Act, the obligations of the carrier under section 118(2)(b) of this Act to pay all costs incurred by the Crown in detaining and maintaining a person pending the person's departure from New Zealand apply in respect of a person described in subsection (1) as if the person were a person described in section 118(2)(a) of this Act, and regardless of whether the Crown incurred the costs before or after the commencement of section 404 of this Act.

423 Responsibilities of carrier, and person in charge, of craft en route to New Zealand

(1) On and from the commencement of section 404 of this Act, a demand by an immigration officer under section 125(2)(c) of the former Act for a list giving specified details that has not been complied with as at the date of that commencement must be treated for the purposes of this Act as a demand by an immigration officer for a list under section 101(2)(a) of this Act.

(2) On and from the commencement of section 404 of this Act, information required by an immigration officer under section 125(2)(d) of the former Act that has not been provided as at the date of that commencement must be treated for the purposes of this Act as information required by an immigration officer under section 101(2)(b) of this Act.

(3) For the purposes of this section, if a craft arrives, or is to arrive, in New Zealand otherwise than at a place that is or contains an immigration control area because of weather conditions or other unforeseen circumstances, the prescribed time referred to in section 101(1)(c) of this Act must be calculated including any time that has elapsed between the arrival of the craft and the commencement of section 404 of this Act.

Refugee and protection status

424 Person recognised as refugee under former Act treated as recognised as refugee under this Act

On and from the commencement of section 404, any person who was recognised as a refugee in New Zealand under Part 6A of the former Act, or before 1 October 1999, or any person who was recognised as a refugee outside New Zealand and travelled to New Zealand as a mandated refugee, must be treated for the purposes of this Act as a person recognised as a refugee in New Zealand under this Act, and this Act applies accordingly with any necessary modifications.

425 Existing claim for recognition as refugee to be determined under this Act (other than subsequent claims made under former Act not yet accepted for consideration)

(1) On and from the commencement of section 404 of this Act, a claim by a person for recognition as a refugee that was made but not yet determined before the

date of that commencement must be treated as if it had been made under Part 5 of this Act, and this Act applies accordingly, with any necessary modifications.

(2) Subsection (3) applies to a subsequent claim (within the meaning of section 129B of the former Act) for recognition as a refugee—

(a) made, and accepted for consideration, before the commencement of section 404 of this Act; but

(b) not determined before the date of that commencement.

(3) The subsequent claim must be determined as if it were a claim accepted for consideration under Part 5 of this Act, and this Act applies accordingly, with any necessary modifications.

(4) To avoid doubt, an appeal against a decision to decline recognition as a refugee (or a protected person) by a person to whom this section applies must be made under section 194 of this Act.

(5) Nothing in this section applies to a subsequent claim (within the meaning of section 129B of the former Act) by a person for recognition as a refugee that was made before the commencement of section 404 of this Act, if the decision as to whether to consider the claim has not yet been determined.

426 Existing subsequent claim for recognition as refugee made under former Act not yet accepted for consideration

(1) Subsection (2) applies to a subsequent claim (within the meaning of section 129B of the former Act) for recognition as a refugee if—

(a) the claim was made before the commencement of section 404 of this Act; but

(b) no decision has been made before that commencement as to whether to consider the claim.

(2) Despite section 404 of this Act, section 129J of the former Act continues to apply to the subsequent claim but,—

(a) references in that section to a refugee status officer must be read as references to a refugee and protection officer; and

(b) if the claim is accepted for consideration, it must be determined as if it were a claim accepted for consideration under Part 5 of this Act, and this Act applies accordingly, with any necessary modifications; and

(c) if the claim is not accepted for consideration, any appeal by the person must be made in accordance with the provisions of the former Act, but the Tribunal must consider the appeal in accordance with section 449(4) of this Act.

427 Acts or things done by refugee status officer for purposes of claim (including subsequent claim) under former Act not required to be repeated by refugee and protection officer

For the purposes of determining a claim (including a subsequent claim), or determining whether to consider a subsequent claim, to which section 425 or 426 of this Act applies, a refugee and protection officer—

(a) is not required to repeat any act or thing already done by a refugee status officer in relation to the claim before the commencement of section 404 of this Act; and

(b) may rely on any act or thing done by a refugee status officer in relation to the claim before the commencement of section 404 of this Act, including any finding of fact, or decision or determination made, by the refugee status officer.

428 Certain persons who under section 129L of former Act cease to be recognised as refugee liable for deportation under this Act

(1) This section applies to a person if the person is not a New Zealand citizen and,—

(a) before the commencement of section 404 of this Act,—

(i) a refugee status officer had determined under section 129L(1)(b) of the former Act that the person should cease to be recognised as a refugee and the person did not appeal against that determination within the time set out in section 129O(3) of the former Act (calculated including any time that has elapsed before the commencement of section 404 of this Act); or

(ii) a refugee status officer had determined under section 129L(1)(c) of the former Act that the person should be excluded from the protection of the Refugee Convention and the person did not appeal against that determination within the time set out in section 129O(3) of the former Act (calculated including any time that has elapsed before the commencement of section 404 of this Act); or

(iii) the Refugee Status Appeals Authority has ceased to recognise the person as a refugee or excluded the person from the protection of the Refugee Convention under section 129L(1)(f)(ii) or (iii) of the former Act; or

(b) after the commencement of section 404 of this Act, the person ceases to be recognised as a refugee, or his or her refugee status is cancelled, by the Tribunal in accordance with section 448(5) of this Act.

(2) On and from the commencement of section 404 of this Act or the date on which subsection (1)(b) applies, as the case may be, the person must be treated as being liable for deportation under section 162 of this Act, and this Act applies accordingly with any necessary modifications.

(3) Despite subsection (2), the Tribunal must not determine whether the person is currently a refugee or a protected person in terms of sections 129 to 131 of this Act, if the person appeals against his or her liability for deportation.

429 Persons subject to section 129U of former Act

A person who, immediately before the commencement of section 404 of this Act, was a person to whom section 129U of the former Act applied must, on and from the date of that commencement, be treated as a person to whom section 150 of this Act applies, and this Act applies accordingly with any necessary modifications.

Turnaround, revocation of permits, removal, deportation, and monitoring

430 Person subject to section 128 or 128B of former Act

(1) A person who, immediately before the commencement of section 404 of this Act, was a person to whom section 128 or 128B of the former Act applied must be treated on and from the date of that commencement as a person to whom section 115 of this Act applies, and this Act applies accordingly with any necessary modifications.

(2) Without limiting subsection (1),—

(a) in determining (under section 116 of this Act) whether section 115 of this Act ceases to apply to the person, any period of time must be calculated including any time that has elapsed before the commencement of section 404 of this Act:

(b) a person must be treated as if he or she were arrested and detained under Part 9 of this Act if he or she was already detained on the commencement of section 404 of this Act.

431 Deportation liability of residence class visa holder convicted of criminal offence

(1) Subsection (2) applies to a person if he or she—

(a) was exempt from the requirement to hold a permit under Part 2 of Schedule 1 of the Immigration Regulations 1999; and

(b) was outside New Zealand immediately before the commencement of section 404 of this Act; and

(c) on or after the commencement of section 404 of this Act is granted a residence class visa following a continuous period of absence from New Zealand of less than 5 years.

(2) For the purposes of section 161 of this Act, the person first holds a residence class visa on the date he or she first entered New Zealand and was exempt from the requirement to hold a permit under Part 2 of Schedule 1 of the Immigration Regulations 1999.

432 Revocation of permits, removal orders, and deportation orders

(1) Despite section 404 of this Act, the former Act continues to apply in relation to a person—

(a) whose visa or permit has been revoked by the Minister under the former Act, whether or not notice of the revocation has been served on the person; or

(b) who is subject to a removal order under the former Act; or

(c) who is subject to a deportation order under the former Act.

(2) Subsection (1) is subject to subsections (3) to (6).

(3) Section 446 of this Act applies to the completion of any appeal lodged by a person to whom subsection (1) applies if the appeal—

(a) was lodged with an appeals body (other than the Refugee Status Appeals Authority) under the former Act; but

(b) was not determined before the commencement of section 404 of this Act.

(4) Section 447 of this Act applies to any appeal by a person to whom subsection (1) applies if—

(a) immediately before the commencement of section 404 of this Act, the person was eligible to appeal to an appeals body (other than the Refugee Status Appeals Authority) under the former Act; and

(b) the person has not yet lodged an appeal.

(5) If a person to whom subsection (1)(b) or (c) applies does not lodge an appeal, or is unsuccessful on appeal, the person may be removed or deported (as the case may be) from New Zealand, and—

(a) the removal or deportation must be effected as if it were a deportation being executed under this Act, and this Act applies accordingly with any necessary modifications; and

(b) the person is liable for arrest and detention under Part 9 of this Act pending his or her deportation being executed.

(6) For the purposes of this section, any time periods specified in the former Act must be calculated including any time that has elapsed before the commencement of section 404 of this Act.

433 Permit granted prior to commencement of section 404 as result of administrative error

(1) Subsection (2) applies if—

(a) a person has been granted a permit under the former Act; and

(b) an immigration officer determines, whether before or after the commencement of section 404 of this Act, that the permit was granted as a

result of an administrative error (within the meaning of section 19 or 32 of the former Act); and

(c) the permit was not revoked in the arrival hall, or office of the Department, in which the error was made and discovered, before the commencement of section 404 of this Act.

(2) The Minister or an immigration officer may, in his or her absolute discretion, and, instead of determining that the person is liable for deportation under section 155 of this Act,—

(a) offer the person a visa of a class and type, and subject to the conditions, that the Minister or the immigration officer considers appropriate; and

(b) if the person agrees, grant the visa.

(3) Subsection (4) applies if—

(a) a person has been granted a permit under the former Act; and

(b) an immigration officer determines that the permit was granted as a result of an administrative error (within the meaning of section 19 or 32 of the former Act); and

(c) the person to whom the permit was granted is, after the commencement of section 404 of this Act, still in the arrival hall or office of the Department in which the permit was granted.

(4) An immigration officer may, under section 67 of this Act, cancel the permit (being the visa deemed to be held by the person under section 415 of this Act) as if it were granted under this Act, and this Act applies accordingly with any necessary modifications.

(5) In this section, **arrival hall** means both—

(a) an arrival hall within the meaning of section 2(1) of the former Act; and

(b) an immigration control area within the meaning of section 4 of this Act.

434 Liability for deportation in respect of visa deemed to be held under section 415 or 417 of this Act

(1) A person may become liable for deportation under Part 6 of this Act in respect of a visa deemed to be held by the person under section 415 or 417 of this Act whether the reason for the liability arose before or after the person was deemed to hold the visa.

(2) For the purposes of subsection (1), any time periods specified in this Act that relate to liability for deportation must be calculated including any time that has elapsed before the commencement of section 404 of this Act during which the person held the permit or visa, or was subject to the exemption, that corresponds with the visa deemed to be held under this Act.

435 Person released on conditions under former Act

(1) This section applies if, immediately before the commencement of section 404 of this Act, a person has been released on conditions under the former Act.

(2) The person remains subject to the relevant conditions, and the former Act continues to apply in respect of that person's release, until—

(a) the person leaves New Zealand; or

(b) in the case of a person to whom section 128AA of the former Act applies, the date on which the order for the person's conditional release from custody expires, or the occurrence of the event upon which it expires.

(3) If subsection (2)(b) applies, the person must deliver himself or herself to an immigration officer at the location stated in the order, and an immigration officer may—

(a) detain the person under section 312 of this Act or cause the person to be arrested and detained under section 313 of this Act, and this Act then applies accordingly; or

(b) agree to residence and reporting requirements under section 315 of this Act, and this Act then applies accordingly.

(4) If subsection (2)(b) applies and the person fails to deliver himself or herself to an immigration officer as required, the person may be detained under section 312 of this Act or arrested and detained under section 313 of this Act, and this Act then applies accordingly.

(5) To avoid doubt, an immigration officer may apply for a warrant of commitment or a further warrant of commitment under section 316 of this Act in respect of a person to whom this section applies.

436 Person subject to residence and reporting requirements under former Act

(1) Any residence and reporting requirements imposed on a person under section 98 of the former Act that were in force immediately before the commencement of section 404 of this Act remain in force and, subject to subsection (2), the former Act continues to apply as if it had not been repealed in respect of those requirements, until the person leaves New Zealand.

(2) If section 98(4) of the former Act applies to a person, the person may be detained under section 312 of this Act or arrested and detained under section 313 of this Act as if the person were a person who had failed to comply with an agreement made under section 315 of this Act, and this Act applies accordingly with any necessary modifications.

(3) To avoid doubt, an immigration officer may apply for a warrant of commitment or further warrant of commitment under section 316 of this Act in respect of a person to whom this section applies.

437 No deportation liability if deportation prohibited under former Act

Nothing in this Act authorises the deportation of a person if the deportation of the person was prohibited under section 93 of the former Act.

Persons subject to Part 4A of former Act

438 Person subject to Part 4A of former Act

(1) Despite section 404 of this Act, Part 4A of the former Act continues to apply to a person in relation to whom a security risk certificate has been provided to the Minister under section 114D of the former Act.

(2) If the Minister directs the chief executive to act in reliance on a certificate under section 114K(1) of the former Act, and the direction requires the making of a removal order or deportation order in respect of the person, the order must be made under the former Act. However,—

(a) the removal or deportation of the person must be effected as if it were a deportation being executed under this Act, and this Act applies accordingly with any necessary modifications; and

(b) section 439 of this Act applies pending the person's deportation being executed.

(3) If the Minister directs the chief executive to act in reliance on a certificate under section 114K(1) of the former Act, and the direction requires the revocation or cancellation of any visa the person holds, the revocation or the cancellation must be made under the former Act. However,—

(a) the removal or deportation of the person must be effected as if it were a deportation being executed under this Act, and this Act applies accordingly with any necessary modifications; and

(b) section 439 of this Act applies pending the person's deportation being executed.

(4) However, if section 114L of the former Act applies, the resumption of the person's immigration processing must be undertaken in accordance with this Act, including in accordance with any applicable provisions of this Part.

(5) This section overrides any provision to the contrary in this Part.

Detention and monitoring

439 Certain persons deemed liable for arrest and detention under Part 9

(1) On and from the commencement of section 404 of this Act, the following persons must be treated as being liable for arrest and detention under this Act:

(a) a person subject to a removal order under section 54 of the former Act:

(b) a person subject to a deportation order under section 72, 73, 91, or 92 of the former Act.

(2) Without limiting subsection (1),—

(a) a warrant under Part 9 of this Act must be obtained at the appropriate time in order to continue to detain a person who—

(i) immediately before the commencement of section 404 of this Act is detained without warrant; and

(ii) is a person described in subsection (1):

(b) a warrant under Part 9 of this Act (being a further warrant under that Part) must be obtained at the appropriate time in order to continue to detain a person who—

(i) immediately before the commencement of section 404 of this Act is detained under warrant; and

(ii) is a person described in subsection (1):

(c) a person described in subsection (1) but not yet detained may be detained under section 312 of this Act or arrested and detained under section 313 of this Act and, if applicable, an application for a warrant of commitment may be made under section 316 of this Act in relation to the person.

(3) This section is subject to sections 440 to 443 of this Act.

440 Detention of person liable for turnaround

Section 117 of this Act applies only in respect of persons to whom section 115 of this Act first applies after the commencement of section 404 of this Act.

441 Detention of person beyond 6 months

Section 323 of this Act applies to a person regardless of whether the person was initially detained before or after the commencement of section 404 of this Act.

442 Detention under former Act without warrant

(1) This section applies to a person who, immediately before the commencement of section 404 of this Act, was being detained without warrant under the former Act.

(2) Despite section 404 of this Act, the person may continue to be detained without warrant under the relevant section of the former Act for the time period allowed under that section (calculated including any time that has elapsed before the commencement of section 404 of this Act). However, any application for a warrant of commitment authorising the continued or further detention of the person must be made under section 316 of this Act, and this Act applies accordingly with any necessary modifications.

443 Detention under former Act with warrant

(1) This section applies to a person who, immediately before the commencement of section 404 of this Act, was being detained under a warrant of commitment issued under the former Act.

(2) Despite section 404 of this Act, a warrant of commitment issued under the former Act remains in force for the time period for which it was issued in respect of the person (calculated including any time that has elapsed before the commencement of section 404 of this Act). However, any application for a further warrant of commitment must be made under section 316 of this Act, and this Act applies accordingly with any necessary modifications.

Reconsiderations

444 Reconsiderations not determined before former Act repealed

(1) An application for the reconsideration of a decision to decline an application for a further temporary permit under section 31 of the former Act not determined before the commencement of section 404 of this Act must be determined in accordance with section 31 of the former Act.

(2) If, after reconsideration, the Minister or an immigration officer grants a visa to the person to whom the application relates, the person must be granted the equivalent visa, and entry permission, under this Act as determined under section 412 of this Act, and this Act applies accordingly with any necessary modifications.

445 Persons eligible for reconsideration before former Act repealed

(1) Subsection (2) applies to a person if—

(a) the person was, immediately before the commencement of section 404 of this Act, eligible to apply for reconsideration of a decision to decline his or her application for a further temporary permit under section 31 of the former Act; and

(b) the person is lawfully in New Zealand.

(2) The person may apply for reconsideration of the decision as if the application were an application for reconsideration of a decision to decline a temporary visa under section 185 of this Act, and this Act applies accordingly with any necessary modifications.

Appeals and other matters in relation to appellate bodies

446 Appeals not determined by appeals body (other than Refugee Status Appeals Authority) before former Act repealed

(1) This section applies to any appeal—

(a) lodged with an appeals body under the former Act (except an appeal lodged with the Refugee Status Appeals Authority); but

(b) not determined before the commencement of section 404 of this Act.

(2) Despite section 404 of this Act,—

(a) an appeal must be determined by the Tribunal in accordance with the relevant provisions of the former Act; and

(b) for that purpose, the Tribunal is deemed to have all the necessary powers and functions of the appeals body under the former Act.

(3) If the appeal has already been set down for hearing by the Deportation Review Tribunal, the matter must be completed by its 3 members (and, for this purpose only, the members are deemed to be members of the Tribunal and each have all the powers and functions of a member of the Tribunal that are necessary to determine the appeal).

(4) If the appeal has already been allocated to a member of an appeals body (other than the Deportation Review Tribunal), the matter must be completed by that member (and, for this purpose only, the member is deemed to be a member of the Tribunal and has all the powers and functions of a member of the Tribunal that are necessary to determine the appeal).

(5) If the appeal has not been set down for hearing by the Deportation Review Tribunal or allocated to a member of an appeals body (other than the Deportation Review Tribunal), the appeal must be determined by a member of the Tribunal.

(6) Subsections (3), (4), and (5) apply unless the chair of the Tribunal determines otherwise.

(7) If, on completion of the appeal, the person concerned is entitled, under the former Act, to be issued with a visa or granted a permit of a type described in the first column of the following table, the person must be granted a visa under this Act of the corresponding type described in the second column of the following table:

Visa to be issued or permit to be granted under former Act	Visa to be granted under this Act
Residence visa	Resident visa allowing travel to New Zealand
Residence permit	Resident visa allowing stay in New Zealand
Temporary permit	Temporary visa

447 Persons eligible to appeal to appeals body (other than Refugee Status Appeals Authority) before former Act repealed

(1) This section applies to any appeal by a person who,—

(a) immediately before the commencement of section 404 of this Act, was eligible to appeal to an appeals body (other than the Refugee Status Appeals Authority) under the former Act; and

(b) has not yet lodged an appeal.

(2) Despite section 404 of this Act,—

(a) the person must lodge the appeal in accordance with the time frames specified for an appeal of that type under the former Act; and

(b) the appeal must be determined by the Tribunal in accordance with the relevant provisions of the former Act; and

(c) for that purpose, the Tribunal is deemed to have all the necessary powers and functions of the appeals body under the former Act.

(3) If, on completion of the appeal, the person concerned is entitled, under the former Act, to be issued with a visa or granted a permit of a type described in the first column of the following table, the person must be granted a visa under this Act of the corresponding type described in the second column of the following table:

Visa to be issued or permit to be granted under former Act	Visa to be granted under this Act
Residence visa	Resident visa allowing travel to New Zealand
Residence permit	Resident visa allowing stay in New Zealand
Temporary permit	Temporary visa

448 Appeals and matters not determined by Refugee Status Appeals Authority before former Act repealed

(1) Subsection (2) applies to the completion of an appeal lodged with the Refugee Status Appeals Authority under the former Act but not determined before the commencement of section 404 of this Act.

(2) The Tribunal must determine the appeal as if it were an appeal to the Tribunal under section 194(1) or 195 of this Act, as the case may be.

(3) Subsection (2) applies—

(a) whether the person concerned is or is not a New Zealand citizen; but

(b) subject to subsections (7) and (8).

(4) Subsection (5) applies to an application by a refugee status officer under section 129L(1)(f) of the former Act to the Refugee Status Appeals Authority made but not determined before the commencement of section 404 of this Act.

(5) The Tribunal must determine the application as if it were an application to the Tribunal under section 144 or 147 of this Act, as the case may be.

(6) Subsection (5) applies—

(a) whether the person concerned is or is not a New Zealand citizen; but

(b) subject to subsections (7) and (8).

(7) Subsection (8) applies if the appeal is in respect of a decision by a refugee status officer to refuse to consider a subsequent claim (within the meaning of section 129B of the former Act) on the grounds that the circumstances in the person concerned's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim.

(8) The Tribunal must determine the appeal in accordance with the relevant provisions of the former Act and, for that purpose, the Tribunal, in addition to its powers and functions under this Act, is deemed to have all the necessary powers and functions of the Refugee Status Appeals Authority. However, if the Tribunal determines that the subsequent claim should be considered, the Tribunal must then determine the matter as if it were an appeal to the Tribunal under section 194(1)(c) of this Act.

(9) If an appeal to which this section applies has already been allocated to a member of the Refugee Status Appeals Authority before the commencement of this section, the matter must be completed by that member and, for this purpose only, the member is deemed to be a member of the Tribunal and has all the powers and functions of a member of the Tribunal that are necessary to determine the appeal.

(10) Subsection (9) applies unless the chair of the Tribunal determines otherwise.

449 Persons eligible to appeal to Refugee Status Appeals Authority before former Act repealed

(1) Subsection (2) applies to a person if,—

(a) immediately before the commencement of section 404 of this Act, the person was eligible to appeal to the Refugee Status Appeals Authority under the former Act; and

(b) the person exercises the right on or after the date of that commencement.

(2) Despite section 404 of this Act, the person's appeal must be—

(a) lodged in accordance with the time frames specified for an appeal of that type under the former Act; but

(b) determined by the Tribunal as if it were an appeal to the Tribunal under section 194(1) or 195, as the case may be.

(3) Subsection (2) is subject to subsection (4).

(4) If the person's appeal is in respect of a decision by a refugee status officer to refuse to consider a subsequent claim (within the meaning of section 129B of the former Act) on the grounds that the circumstances in the person's home country have not changed to such an extent that the subsequent claim is based on significantly different grounds to a previous claim, the Tribunal must determine the appeal in accordance with the relevant provisions of the former Act and, for that purpose, the Tribunal is, in addition to its powers and functions under this Act, deemed to have all the necessary powers and functions of the Refugee Status Appeals Authority. However, if the Tribunal determines that the subsequent claim should be considered, the Tribunal must then determine the matter as if it were an appeal to the Tribunal under section 194(1)(c) of this Act.

450 Appeals not determined by court before former Act repealed

(1) Despite section 404 of this Act, an appeal lodged under the former Act with a court but not determined before the commencement of that section must be determined by the court in accordance with the relevant provisions of the former Act.

(2) On completion of the appeal, the court may do 1 or more of the following things:

(a) reverse, confirm, or amend the decision in respect of which the appeal was brought:

(b) remit the matter to the Tribunal with the court's opinion together with any directions on how the appeal should be dealt with:

(c) make any other order in relation to the matter as it thinks fit.

(3) If the effect of the court order is that the person may be removed or deported from New Zealand,—

(a) the removal or deportation must be effected as if it were a deportation being executed under this Act, and this Act applies accordingly with any necessary modifications; and

(b) the person is liable for arrest and detention under Part 9 of this Act pending his or her deportation being executed.

(4) If the matter is remitted to the Tribunal, the Tribunal must deal with it in the same way as an appeal or matter of the same type is dealt with under this Part.

(5) For the purposes of this section, any time periods specified in the former Act must be calculated including any time that has elapsed before the commencement of section 404 of this Act.

451 Persons eligible to appeal to court before former Act repealed

(1) Subsection (2) applies if, immediately before the commencement of section 404 of this Act, a person was eligible to appeal under the former Act to a court.

(2) Despite section 404 of this Act, the person's appeal must be—

(a) lodged in accordance with the time frames specified for an appeal of that type under the former Act; and

(b) determined by the court in accordance with the relevant provisions of the former Act.

(3) On completion of the appeal the court may do 1 or more of the following things:

(a) reverse, confirm, or amend the decision in respect of which the appeal was brought:

(b) remit the matter to the Tribunal with the court's opinion together with any directions on how the appeal should be dealt with:

(c) make any other order in relation to the matter as it thinks fit.

(4) If the matter is remitted to the Tribunal, the Tribunal must deal with it in the same way as a matter of the same type is dealt with under this Part.

452 Appeals against, or review proceedings in respect of, Tribunal decisions under this subpart to be made under Part 7

Any appeal against, or review proceedings in respect of, a decision of the Tribunal made under this subpart must be made in accordance with Part 7 of this Act.

453 No new appeal rights created

(1) To avoid doubt, nothing in this Part allows a person who had a right of appeal under the former Act to take a further appeal under this Act in respect of the same matter, whether or not the person did in fact appeal under the former Act.

(2) Subsection (1) is subject to any provision in this subpart that expressly provides otherwise.

Disclosure of immigration information to other agencies, bodies, or persons

454 Arrangements under former Act for disclosure of immigration information

(1) This section applies if, before the commencement of section 404 of this Act, the chief executive or the Secretary of Labour has made an arrangement or entered into an agreement with any department, organisation, or other entity or person under any of sections 141AA, 141AC, 141AE, or 141A of the former Act in respect of the disclosure of information, and the arrangement is in force immediately before that commencement.

(2) An arrangement described in subsection (1)—

(a) must be treated as an arrangement between the chief executive and the chief executive (or other appropriate person as the case may be) of the department of State, organisation, entity, or person made under the relevant provisions of sections 294 to 306 of this Act, and this Act applies accordingly with any necessary modifications; and

(b) continues in force according to its general tenor, subject to any necessary modifications.

Offences, evidence, and classified information

455 Offences

(1) A person commits an offence against this Act under section 343(1)(d) whether the condition concerned was—

(a) imposed (or deemed to be imposed) under this Act; or

(b) imposed under the former Act (whether as a requirement or a condition).

(2) A person commits an offence against section 344(a) of this Act whether the document or information was required by an immigration officer—

(a) under this Act; or

(b) under the former Act, if the officer could lawfully require the document or information under that Act.

456 Offences by employers

(1) Subsection (2) applies if, before the commencement of section 404 of this Act,—

(a) an employer allowed a person to undertake employment in the employer's service; and

(b) at the time that the person commenced employment in the employer's service, the employer had a reasonable excuse under section 39(1B) of the former Act for allowing the person to undertake that employment; and

(c) the person is not entitled under this Act to undertake that employment.

(2) No employer to whom subsection (1) applies is liable for an offence against section 350(1)(b) of this Act in respect of any period after the commencement of section 404 of this Act during which the employer continues to employ the employee, unless, at any time in the preceding 12 months, the employer has been informed in writing by an immigration officer (under either Act) that the employee is not entitled to undertake that employment.

457 Evidence in proceedings

In any proceedings relating to any matter under this Act, whether before the Tribunal or a court, a certificate signed by an immigration officer and containing a statement in relation to any person to the effect of 1 or more of the matters described in section 143(1) of the former Act is deemed to be proof of the truth of the statement, in the absence of proof to the contrary established on the balance of probabilities.

458 Classified information

A decision may be made relying on classified information in accordance with this Act regardless of whether the application, claim, or other matter concerned arose before or after the commencement of section 404 of this Act.

Miscellaneous provisions

459 Children to have responsible adult to represent their interests

For the purposes of this Act, any person who has been nominated as a responsible adult for a minor under section 141B of the former Act must be treated as a person who has been nominated as a responsible adult under section 375 of this Act, and this Act applies accordingly with any necessary modifications.

460 Special directions

(1) A special direction made in accordance with section 130 of the former Act and in force immediately before the commencement of section 404 of this Act remains in force on and from the date of that commencement according to its tenor and with any necessary modifications.

(2) A special direction saved by subsection (1) may be revoked or amended by further special direction given under section 378 of this Act.

461 Delegation of powers of Minister

(1) A delegation made by the Minister under section 131 of the former Act and in force immediately before the commencement of section 404 of this Act remains in force on and from the date of that commencement according to its tenor and with any necessary modifications.

(2) A delegation saved by subsection (1) may be revoked by the Minister under section 380(3) of this Act.

462 Immigration officers

(1) On and from the commencement of section 404 of this Act, immigration officers designated under section 133 of the former Act, including customs officers and other persons designated as immigration officers in accordance with paragraphs (b) and (c) of the definition of immigration officer in section 2(1) of the former Act, must be treated as immigration officers designated under section 388 of this Act who are authorised to exercise visa and entry permission decision-making powers.

(2) On and from the commencement of section 404 of this Act, visa officers designated in accordance with paragraphs (b) and (c) of the definition of visa officer in section 2(1) of the former Act must be treated as immigration officers designated under section 388 of this Act who are authorised to make decisions relating to visas outside New Zealand.

(3) A designation deemed to continue by subsection (1) or (2) may be revoked by the chief executive under section 391 of this Act.

(4) Subsections (1) and (2) are subject to any condition imposed on the designation under the former Act.

463 Immigration officers who may make and cancel removal orders under former Act

(1) Despite section 462(1) of this Act, an immigration officer designated by the chief executive for the purpose of section 54 of the former Act—

(a) may continue to make removal orders under that section if the making of an order is necessary for the purposes of completing any matter to which this Part applies; and

(b) may continue to cancel removal orders under section 58 of the former Act if the cancelling of an order is necessary for the purposes of completing any matter to which this Part applies.

(1A) Privacy principle 6 (which relates to access to personal information and is set out in section 6 of the Privacy Act 1993) does not apply to any reasons for any decision made by an immigration officer under section 58 of the former Act.

(2) To avoid doubt, this section applies to an immigration officer only if his or her designation is current immediately before the commencement of section 404 of this Act.

Section 463(1A): inserted, on 7 May 2015, by section 108 of the Immigration Amendment Act 2015 (2015 No 48).

464 Acts or things done by immigration officer under former Act not required to be repeated

For the purposes of completing any matter to which this Part applies, an immigration officer—

(a) is not required to repeat any act or thing already done by an immigration officer in relation to the matter before the commencement of section 404 of this Act; and

(b) may rely on any act or thing done by an immigration officer in relation to the matter before the commencement of section 404 of this Act, including any finding of fact, or decision or determination made, by an immigration officer.

465 Exercise of certain powers by customs officers

(1) Despite section 2(2) of this Act, a customs officer undertaking immigration duties may exercise the powers in sections 283, 284, and 285 of this Act on and from the date referred to in section 2(4) of this Act until the date those sections are brought into force, and sections 283, 284, and 285 of this Act apply accordingly, as if references to an immigration officer were references to a customs officer.

(2) It is sufficient compliance with section 327(1)(b) of this Act if the officer exercising powers in accordance with this section produces his or her identity card or other means of identification provided for in section 7 of the Customs and Excise Act 1996.

466 Exercise of certain powers by Police

Despite section 2(2) of this Act, a constable may exercise the powers in sections 278 and 283 to 287 of this Act on and from the date referred to in section 2(4) of this Act, and this Act applies accordingly as if a reference to an immigration officer were a reference to a constable.

467 Refugee status officers

(1) On and from the commencement of section 404 of this Act, a person designated as a refugee status officer under section 129E of the former Act must be treated as a refugee and protection officer designated under section 390 of this Act.

(2) A designation deemed to continue by subsection (1) may be revoked by the chief executive under section 391 of this Act.

468 Forms

On and from the commencement of section 404 of this Act, a form approved under section 132 of the former Act for which the approval is current immediately before the date of that commencement must be treated as if it had been approved under section 381 of this Act, and must be read with the necessary modifications.

469 Bonds imposed under former Act

(1) On and from the commencement of section 404 of this Act, a bond imposed under the former Act may be refunded or forfeited in accordance with section 397 of this Act as if it had been imposed under this Act, and this Act applies accordingly with any necessary modifications.

(2) The period during which a person must apply for a refund of the bond under section 397(3) of this Act must be calculated including any time that has elapsed before the commencement of section 404 of this Act.

470 Sponsorship under former Act

(1) This section applies to an undertaking if—

(a) a person has supplied a written undertaking relating to the employment, accommodation, maintenance, or repatriation of an applicant for a visa or permit under the former Act (whether under section 28 of that Act or otherwise); and

(b) the undertaking is in force immediately before the commencement of section 404 of this Act.

(2) The undertaking must be treated as an undertaking to which section 55 of this Act applies, and this Act applies accordingly with any necessary modifications.

(3) Despite subsection (2), nothing in section 55(3)(b) applies to an undertaking to which this section applies.

471 Files of appeals bodies

As from the commencement of this section, the department of State referred to in clause 5 of Schedule 2 is the owner of, and responsible for, all the files of the appeals bodies.

472 Transitional regulations

(1) The Governor-General may, by Order in Council, make regulations—

(a) providing transitional and savings provisions concerning the coming into force of this Act that may be in addition to, or in place of, the transitional and savings provisions in relation to this Part:

(b) providing that, subject to such conditions as may be specified in the regulations, during a specified transitional period,—

(i) specified provisions of this Act (including definitions) do not apply:

(ii) specified terms have the meaning given to them by the regulations:

(iii) specified provisions repealed or amended or revoked by this Act are to continue to apply:

(c) providing for any other matters necessary for facilitating or ensuring an orderly transition from the provisions of the former Act to the provisions of this Act.

(2) No regulations made under this section may be made, or continue in force, later than 2 years after the date on which this section commences.

473 Transitional immigration instructions

Immigration instructions certified under section 22 of this Act may make any appropriate or necessary provision for facilitating or ensuring an orderly transition from the application of provisions and Government immigration policy (including Government residence policy) under the former Act to the application of the provisions of this Act and immigration instructions made under it.

Exercise of certain powers and functions before commencement of certain provisions of this Act

474 Exercise of certain powers and functions before commencement of certain provisions of this Act

(1) Despite section 2(1) of this Act, on and from the commencement of this section, the Governor-General may exercise the following powers under the following sections of this Act:

(a) to appoint members, including the chair, to the Tribunal under section 219(2) and (3):

(b) to make regulations under sections 400 to 403:

(c) to make transitional regulations under section 472.

(2) Despite section 2(1) of this Act, on and from the commencement of this section, the Prime Minister may designate an agency under section 264(1) of this Act.

(3) Despite section 2(1) of this Act, on and from the commencement of this section, the Minister may exercise or perform the following powers or functions under the following sections of this Act:

(a) to certify immigration instructions under section 22(1) and to classify them under section 23(1):

(b) to certify transitional immigration instructions under section 22(1) and to classify them under section 23(1):

(c) to delegate his or her powers to immigration officers under section 380(1).

(4) Despite section 2(1) of this Act, on and from the commencement of this section, the chief executive may exercise or perform the following powers or functions under the following sections of this Act:

(a) to publish immigration instructions under section 25(1):

(b) to give general instructions under section 26(4):

(c) to make arrangements with the relevant persons for the disclosure or exchange of information under sections 294 to 306:

(d) to approve premises for the purpose of detention under section 330:

(e) to designate certain places as immigration control areas under section 382(1):

(f) to designate under section 383 places outside New Zealand where an immigration officer may grant entry permission to a person before the person travels to New Zealand:

(g) to approve and issue forms under section 381(1):

(h) to designate immigration officers under section 388(1) and authorise their functions and powers under that section and section 389:

(i) to designate refugee and protection officers under section 390(1) and, for each officer, designate whether he or she is an officer for the purposes of making decisions relying on classified information under section 33(2)(b).

(5) Despite section 2(1) of this Act, on and from the commencement of this section, the chief executive referred to in clause 5(2) of Schedule 2 may approve and issue forms under section 381(3).

(6) Despite section 2(1) of this Act, on and from the commencement of this section, the chair of the Tribunal may undertake 1 or more of the matters described in section 220 of this Act.

(7) Despite section 2(1) of this Act, on and from the commencement of this section, the chair of the Tribunal and the Attorney-General may agree on any general practices and procedures that may be necessary under section 260(1)(a) of this Act.

(8) Despite section 2(1) of this Act, on and from the commencement of this section, the Chief Justice and the Attorney-General may agree on any general practices and procedures that may be necessary under section 260(1)(b) of this Act before that section comes into force or takes effect.

(9) Despite section 2(1) of this Act, on and from the commencement of this section, an agency designated by the Prime Minister under section 264(1) of this Act may recognise persons as special advocates.

(10) Despite section 2(1) of this Act, on and from the commencement of this section, the chief executive of a department of State or other relevant person may make arrangements with the chief executive of the Department for the disclosure or exchange of information under sections 294 to 306 of this Act.

(11) Subsections (1) to (10) apply as if the provision under which the power or function is exercised or performed and any other provision of this Act that relates to the provision that is not in force when the power or function is exercised or performed were in force when the power or function is exercised.

(12) This section does not limit section 11 of the Interpretation Act 1999.

Part 13
Amendments to Immigration Act 1987

475 Principal Act amended

This Part amends the Immigration Act 1987.

476 Cancellation of removal order

Section 58 is amended by repealing subsection (5) and substituting the following subsections:

(5) Nothing in this section gives a person a right to apply to an immigration officer for the cancellation of a removal order. However, an immigration officer must consider cancelling the removal order of a person who is in New Zealand if the person provides information to the officer concerning his or her personal circumstances, and the information is relevant to New Zealand's international obligations.

(6) If an immigration officer does consider cancelling a removal order, whether by way of a purported application or his or her own motion, the officer must have regard to any relevant international obligations, but otherwise,—

(a) may make a decision as he or she thinks fit; and

(b) in doing so, is not under any obligation, whether by implication or otherwise,—

(i) to apply any test or any particular test and, in particular, the officer is not obliged to apply the test set out in section 47(3); or

(ii) to inquire into the circumstances of, or to make any further inquiries in respect of the information provided by or in respect of, the person who is the subject of the removal order or any other person.

(7) Whether or not an immigration officer considers cancelling a removal order,—

(a) he or she is not obliged to give reasons for any decision, other than the reason that this subsection applies; and

(b) section 23 of the Official Information Act 1982 does not apply in respect of the decision.

(8) However, to the extent that an immigration officer does have regard to any international obligations, the officer is obliged to record—

(a) a description of the international obligations; and

(b) the facts about the person's personal circumstances.

477 New section 141ABA inserted

The following section is inserted after section 141A:

141ABA Disclosure of information to employers

(1) The purpose of this section is to facilitate the disclosure of information by the Department to an employer to enable the employer to verify that a person is entitled under this Act to undertake employment in the employer's service.

(2) On receipt of a request from an employer, the chief executive may, for the purpose of this section, disclose the information specified in subsection (4) to the employer.

(3) The chief executive must not disclose the information specified in subsection (4) unless satisfied that the request—

(a) has been made by an employer in New Zealand; and

(b) is for the purpose of enabling the employer to verify that a person is entitled under this Act to undertake employment in the employer's service.

(4) The information that may be disclosed under this section is as follows:

(a) whether the person is entitled to undertake that employment in New Zealand:

(b) if the person is entitled to undertake that employment in New Zealand,—

(i) the duration of the entitlement; and

(ii) any conditions imposed on that entitlement.

(5) Where the chief executive discloses information under this section to an employer, the employer must be informed of the requirement to comply with the Privacy Act 1993 in relation to that information.

478 Interpretation

The definition of **fine** in section 141AD is amended by adding the following paragraph:

(d) any levy payable under the Sentencing Act 2002

Schedule 1
Convention Relating to the Status of Refugees

ss 127(3), 165

Done at Geneva on 28 July 1951[1]

Entry into force: 22 April 1954, in accordance with Article 43

Text: United Nations Treaty Series No. 2545, Vol. 189, p. 137

PREAMBLE

The High Contracting Parties

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination.

Considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms.

Considering that it is desirable to revise and consolidate previous international agreements relating to the status of refugees and to extend the scope of and the protection accorded by such instruments by means of a new agreement.

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation.

Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States.

Noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon the co-operation of States with the High Commissioner.

Have agreed as follows:

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[1] The Convention was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons held at Geneva from 2 to 25 July 1951. The Conference was convened pursuant to resolution 429 (V) adopted by the General Assembly of the United Nations on 14 December 1950. For the text of this resolution, see Official Records of the General Assembly, Fifth Session, Supplement No 20 (A/1775) p 48.

CHAPTER I
GENERAL PROVISIONS

Article 1—Definition of the term "Refugee"

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization:

Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section:

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country: or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

In the case of a person who has more than one nationality, the term "the country of his nationality" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.

B. (1) For the purposes of this Convention, the words "events occurring before 1 January 1951" in Article 1, Section A, shall be understood to mean either:

(a) "events occurring in Europe before 1 January 1951"; or

(b) "events occurring in Europe or elsewhere before 1 January 1951",

and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.[2]

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[2] On acceding to the Convention on 30 June 1960 the New Zealand Government declared, in accordance with Section B (1) of Article 1 of the Convention, that "for the purposes of the New Zealand Government's obligations under the Convention, the words "events occurring before 1 January 1951" in Section A of Article 1 shall be understood to mean "events occurring in Europe or elsewhere before 1 January 1951"". See also Article I of the 1967 Protocol Relating to the Status of Refugees, as included in this schedule.

(2) Any Contracting State which has adopted alternative *(a)* may at any time extend its obligations by adopting alternative *(b)* by means of a notification addressed to the Secretary-General of the United Nations.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily re-acquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connexion with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall *ipso facto* be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

Article 2—General obligations

Every refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

Article 3—Non-discrimination

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4—Religion

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

Article 5—Rights granted apart from this Convention

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to refugees apart from this Convention.

Article 6—The term "in the same circumstances"

For the purpose of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.

Article 7—Exemption from reciprocity

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally.
2. After a period of three years' residence, all refugees shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to refugees the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.

4. The Contracting States shall consider favourably the possibility of according to refugees, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to refugees who do not fulfil the conditions provided for in paragraphs 2 and 3.

5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in Articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

Article 8—Exemption from exceptional measures

With regard to exceptional measures which may be taken against the person, property or interests of nationals of a foreign State, the Contracting States shall not apply such measures to a refugee who is formally a national of the said State solely on account of such nationality. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this Article, shall, in appropriate cases, grant exemptions in favour of such refugees.

Article 9—Provisional measures

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a refugee and that the continuance of such measures is necessary in his case in the interests of national security.

Article 10—Continuity of residence

1. Where a refugee has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a refugee has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

Article 11—Refugee seamen

In the case of refugees regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

CHAPTER II
JURIDICAL STATUS

Article 12—Personal status

1. The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a refugee and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

Article 13—Movable and immovable property

The Contracting States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

Article 14—Artistic rights and industrial property

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a refugee shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

Article 15—Right of association

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.

Article 16—Access to courts

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.

2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*.

3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

CHAPTER III
GAINFUL EMPLOYMENT

Article 17—Wage-earning employment

1. The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.
2. In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to a refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned, or who fulfils one of the following conditions:
   (a) He has completed 3 years' residence in the country;
   (b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefits of this provision if he has abandoned his spouse;
   (c) He has one or more children possessing the nationality of the country of residence.
3. The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

Article 18—Self-employment

The Contracting States shall accord to a refugee lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

Article 19—Liberal professions

1. Each Contracting State shall accord to refugees lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

2. The Contracting States shall use their best endeavours consistently with their laws and constitutions to secure the settlement of such refugees in the territories, other than the metropolitan territory, for whose international relations they are responsible.

CHAPTER IV
WELFARE

Article 20—Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, refugees shall be accorded the same treatment as nationals.

Article 21—Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 22—Public education

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.
2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Article 23—Public relief

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 24—Labour legislation and social security

1. The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:
   (a) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of

work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.[3]

3. The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

CHAPTER V
ADMINISTRATIVE MEASURES

Article 25—Administrative assistance

1. When the exercise of a right by a refugee would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting States in whose territory he is residing shall arrange that such as-

[3] On acceding to the Convention on 20 June 1960 the New Zealand Government entered a reservation to Article 24 (2) in the following terms: "the Government of New Zealand can only undertake to give effect to the provisions contained in paragraph (2) of Article 24 of the Convention so far as the law of New Zealand allows".

sistance be afforded to him by their own authorities or by an international authority.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities, and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this Article shall be without prejudice to Articles 27 and 28.

Article 26—Freedom of movement

Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

Article 27—Identity papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28—Travel documents

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

Article 29—Fiscal charges

1. The Contracting States shall not impose upon refugees duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

Article 30—Transfer of assets

1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.
2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

Article 31—Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 32—Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.
2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.
3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

Article 33—Prohibition of expulsion or return ("refoulement")

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

Article 34—Naturalization

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

CHAPTER VI
EXECUTORY AND TRANSITORY PROVISIONS

Article 35—Co-operation of the national authorities with the United Nations

1. The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention.
2. In order to enable the Office of the High Commissioner or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the Contracting States undertake to provide them in the appropriate form with information and statistical data requested concerning:
   (a) the condition of refugees,
   (b) the implementation of this Convention, and
   (c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article 36—Information on national legislation

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

Article 37—Relation to previous Conventions

Without prejudice to Article 28, paragraph 2, of this Convention, this Convention replaces, as between parties to it, the Arrangements of 5 July 1922, 31 May 1924, 12 May 1926, 30 June 1928 and 30 July 1935, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 and the Agreement of 15 October 1946.

CHAPTER VII
FINAL CLAUSES

Article 38—Settlement of disputes

Any dispute between parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article 39—Signature, ratification and accession

1. This Convention shall be opened for signature at Geneva on 28 July 1951 and shall thereafter be deposited with the Secretary-General of the United Nations. It shall be open for signature at the European Office of the United Nations from 28 July to 31 August 1951 and shall be re-opened for signature at the Headquarters of the United Nations from 17 September 1951 to 31 December 1952.
2. This Convention shall be open for signature on behalf of all States Members of the United Nations, and also on behalf of any other State invited to attend the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons or to which an invitation to sign will have been addressed by the General Assembly. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. This Convention shall be open from 28 July 1951 for accession by the States referred to in paragraph 2 of this Article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 40—Territorial application clause

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the governments of such territories.

Article 41—Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those Articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States,

(b) With respect to those Articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such Articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment.

(c) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

Article 42—Reservations

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to Articles 1, 3, 4, 16 (1), 33, 36–46 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

Article 43—Entry into force

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

Article 44—Denunciation

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.
3. Any State which has made a declaration or notification under Article 40 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

Article 45—Revision

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.
2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

Article 46—Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in Article 39:

(a) of declarations and notifications in accordance with Section B of Article 1;

(b) of signatures, ratifications and accessions in accordance with Article 39;

(c) of declarations and notifications in accordance with Article 40;

(d) of reservations and withdrawals in accordance with Article 42;

(e) of the date on which this Convention will come into force in accordance with Article 43;

(f) of denunciations and notifications in accordance with Article 44;

(g) of requests for revision in accordance with Article 45.

IN FAITH WHEREOF the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

DONE AT GENEVA, this twenty-eighth day of July, one thousand nine hundred and fifty-one, in a single copy, of which the English and French texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in Article 39.

III
PROTOCOL RELATING TO THE STATUS OF REFUGEES OF 31 JANUARY 1967[4]

Entry into force: 4 October 1967, in accordance with Article VIII

Text: United Nations Treaty Series No. 8791, Vol. 606, p. 267

The States Parties to the present Protocol,

Considering that the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 (hereinafter referred to as the Convention) covers only those persons who have become refugees as a result of events occurring before 1 January, 1951,

Considering that new refugee situations have arisen since the Convention was adopted and that the refugees concerned may therefore not fall within the scope of the Convention,

Considering that it is desirable that equal status should be enjoyed by all refugees covered by the definition in the Convention irrespective of the dateline 1 January 1951,

Have agreed as follows:

Article I—General provision

1. The States Parties to the present Protocol undertake to apply Articles 2 to 34 inclusive of the Convention to refugees as hereinafter defined.

2. For the purpose of the present Protocol, the term "refugee" shall, except as regards the application of paragraph 3 of this Article, mean any person within the definition of Article 1 of the Convention as if the words "As a result of events occurring before 1 January 1951 and …" and the words "… as a result of such events", in Article 1 A (2) were omitted.

3. The present Protocol shall be applied by the States Parties hereto without any geographic limitation, save that existing declarations made by States already Parties to the Convention in accordance with Article 1 B (1) *(a)* of the Convention, shall, unless extended under Article 1 B (2) thereof, apply also under the present Protocol.[5]

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[4] The Protocol was signed by the President of the General Assembly and by the Secretary-General on 31 January 1967.

[5] For New Zealand's declaration, see footnote to Article 1 B (1) of the Convention as it appears in this schedule.

Article II—Co-operation of the national authorities with the United Nations

1. The States Parties to the present Protocol undertake to cooperate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the present Protocol.
2. In order to enable the Office of the High Commissioner, or any other agency of the United Nations which may succeed it, to make reports to the competent organs of the United Nations, the States Parties to the present Protocol undertake to provide them with the information and statistical data requested, in the appropriate form, concerning:
   (a) The condition of refugees:
   (b) The implementation of the present Protocol:
   (c) Laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.

Article III—Information on national legislation

The States Parties to the present Protocol shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of the present Protocol.

Article IV—Settlement of disputes

Any dispute between States Parties to the present Protocol which relates to its interpretation or application and which cannot be settled by other means shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

Article V—Accession

The present Protocol shall be open for accession on behalf of all States Parties to the Convention and of any other State Member of the United Nations or member of any of the specialized agencies or to which an invitation to accede may have been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article VI—Federal clause

In the case of a Federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Feder-

al Government shall to this extent be the same as those of States Parties which are not Federal States:

(b) With respect to those articles of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

(c) A Federal State Party to the present Protocol shall, at the request of any other State Party hereto transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention to be applied in accordance with Article I, paragraph 1, of the present Protocol, showing the extent to which effect has been given to that provision by legislative or other action.

Article VII—Reservations and declarations

1. At the time of accession, any State may make reservations in respect of Article IV of the present Protocol and in respect of the application in accordance with Article I of the present Protocol of any provisions of the Convention other than those contained in Articles 1, 3, 4, 16 (1) and 33 thereof, provided that in the case of a State Party to the Convention reservations made under this Article shall not extend to refugees in respect of whom the Convention applies.

2. Reservations made by States Parties to the Convention in accordance with Article 42 thereof shall, unless withdrawn, be applicable in relation to their obligations under the present Protocol.

3. Any State making a reservation in accordance with paragraph 1 of this Article may at any time withdraw such reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

4. Declarations made under Article 40, paragraphs 1 and 2, of the Convention by a State Party thereto which accedes to the present Protocol shall be deemed to apply in respect of the present Protocol, unless upon accession a notification to the contrary is addressed by the State Party concerned to the Secretary-General of the United Nations. The provisions of Article 40, paragraphs 2 and 3, and of Article 44, paragraph 3, of the Convention shall be deemed to apply *mutatis mutandis* to the present Protocol.

Article VIII—Entry into force

1. The present Protocol shall come into force on the day of deposit of the sixth instrument of accession.

2. For each State acceding to the Protocol after the deposit of the sixth instrument of accession, the Protocol shall come into force on the date of deposit by such State of its instrument of accession.

Article IX—Denunciation

1. Any State Party hereto may denounce this Protocol at any time by a notification addressed to the Secretary-General of the United Nations.
2. Such denunciation shall take effect for the State Party concerned one year from the date on which it is received by the Secretary-General of the United Nations.

Article X—Notifications by the Secretary-General of the United Nations

The Secretary-General of the United Nations shall inform the States referred to in Article V above of the date of entry into force, accessions, reservations and withdrawals of reservations to and denunciations of the present Protocol, and of declarations and notifications relating hereto.

Article XI—Deposit in the archives of the Secretariat of the United Nations

A copy of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, signed by the President of the General Assembly and by the Secretary-General of the United Nations, shall be deposited in the archives of the Secretariat of the United Nations. The Secretary-General will transmit certified copies thereof to all States Members of the United Nations and to the other States referred to in Article V above.

Schedule 2
Provisions relating to Tribunal

s 237

1 Term of office of members

(1) Every member of the Tribunal holds office for such period not exceeding 5 years as is fixed in the member's warrant of appointment.

(2) A member of the Tribunal may be reappointed.

(3) Any member of the Tribunal who is not a District Court Judge may at any time be removed from office by the Governor-General for disability affecting the performance of his or her duties, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

(4) A member of the Tribunal may at any time resign the office by notice in writing to the Governor-General.

(5) Despite the expiry of the term of office of a member of the Tribunal, or the member's resignation, the member is deemed to continue as a member of the Tribunal for the purpose of deciding any matter that was wholly heard before the expiry of the term of office or before the resignation took effect.

2 Oath of office

Each member of the Tribunal must, before entering on the performance of any of his or her functions under this Act, swear or affirm before a Judge of the High Court that he or she will faithfully and impartially perform his or her duties as a member of the Tribunal.

3 Deputy chair of Tribunal

(1) The Minister of Justice may designate a member or members of the Tribunal as deputy chair or chairs of the Tribunal and may at any time revoke such a designation.

(2) If the chair of the Tribunal is unable to act as chair by reason of illness, absence from New Zealand, or other sufficient cause, a member designated under subclause (1) may act as chair, subject to subclause (3).

(3) A member may only act as chair in any proceedings involving classified information if the member is a District Court Judge.

(4) The fact that a member designated under subclause (1) acts as chair of the Tribunal is conclusive evidence of the member's authority to do so.

4 Remuneration

(1) The remuneration of the District Court Judge who is chair of the Tribunal, and of any other member who is a District Court Judge, is that set under the Remuneration Authority Act 1977.

(2) The other members of the Tribunal must be paid remuneration by way of fees, salary, and allowances (including travelling allowances and expenses) in accordance with the Fees and Travelling Allowances Act 1951, and that Act applies as if the members were members of a statutory Board within the meaning of that Act.

5 Administration, staffing, and other resources

(1) The administration services, staffing, and other resources necessary to enable the Tribunal to carry out its functions under this Act are to be provided by the department of State for the time being designated for the purpose by the Prime Minister.

(2) The chief executive of the department designated under subclause (1) must consult the chair of the Tribunal about the level of resources to be provided.

6 Members of Tribunal not personally liable

No member of the Tribunal is personally liable for any act done or omitted to be done by the Tribunal or any member of it in good faith in pursuance or intended pursuance of the powers and functions of the Tribunal.

Compare: 1987 No 74 Schedule 3C cl 10

7 Proceedings to continue on change in Tribunal

(1) Where any change takes place in a member constituting the Tribunal (including by reason of any vacancy in the membership of the Tribunal), any proceedings then in progress do not abate and are not affected, but are to continue and are to be dealt with by the Tribunal as if no change had taken place.

(2) However, the Tribunal may, in its discretion, require evidence to be reheard where necessary.

Proceedings of Tribunal

8 Evidence

(1) The Tribunal may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with the subject of the proceedings before it, whether or not it would be admissible in a court of law.

(2) Subject to subclause (1) and section 368(1), the Evidence Act 2006 applies to the Tribunal as if it were a court.

9 Tribunal may take evidence on oath

(1) The Tribunal may take evidence on oath, and for that purpose a member of the Tribunal or a member of the staff of the Tribunal may administer an oath.

(2) The Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Tribunal thinks fit, verifying it by oath.

10 Powers of investigation

(1) For the purposes of any of its proceedings, the Tribunal, or any person authorised by it in writing to do so, may—

(a) inspect and examine any papers, documents, records, or things:

(b) require any person (including any government agency) to produce for examination any papers, documents, records, or things in that person's possession or under that person's control, and to allow copies of or extracts from any such papers, documents, or records to be made:

(c) require any person (including any government agency) to provide, in a form approved by or acceptable to the Tribunal, any information or particulars that may be required by it, and any copies of or extracts from any such papers, documents, or records.

(2) The Tribunal may, if it thinks fit, require that any written information or particulars or any copies or extracts provided under this clause be verified by statutory declaration or otherwise as the Tribunal may require.

(3) For the purposes of its proceedings, the Tribunal may of its own motion, or on application, order that any information or particulars, or a copy of the whole or any part of any paper, document, or record, provided or produced to it, be supplied to any person appearing before the Tribunal, and may in the order impose such terms and conditions as it thinks fit in respect of such supply and of the use that is to be made of the information, particulars, or copy.

(4) This clause is subject to section 35(3).

11 Power to summon witnesses

(1) For the purposes of its proceedings, the Tribunal may of its own motion, or on application, issue in writing a summons in the prescribed form requiring any person to attend at the time and place specified in the summons and to give evidence, and to produce any papers, documents, records, or things in that person's possession or under that person's control that are relevant to the subject of the proceedings.

(2) For the purposes of this Act, the power to issue summonses, or to do any other act preliminary or incidental to the hearing of any matter by the Tribunal, may be exercised by the Tribunal, or by an officer of the Tribunal purporting to act by direction or with the authority of the Tribunal.

(3) If a summons is issued by the Tribunal in respect of a person detained in custody, the manager or other person in charge of the relevant prison or other premises, or the other person having custody of the detained person, must produce or allow the production of the person as directed in the summons.

(4) This clause is subject to section 35(3).

12 Service of summons

(1) A summons to a witness must be served by personal service on the person summoned.

(2) The summons must be served at least 24 hours before the attendance of the witness is required.

13 Representation of parties

Any party or person involved in proceedings before the Tribunal, or called upon to appear before the Tribunal, may—

(a) appear personally; or

(b) be represented—

(i) by an agent; or

(ii) by a lawyer.

14 Service outside New Zealand

Any document relating to proceedings before the Tribunal may be served outside New Zealand—

(a) by leave of the Tribunal; and

(b) in accordance with regulations made under this Act.

15 Privileges and protections of witnesses, counsel, etc

(1) Every person has the same privileges in relation to the giving of information to the Tribunal, the answering of questions put by the Tribunal, and the production of papers, documents, records, and things to the Tribunal as witnesses have in courts of law.

(2) Every witness giving evidence, and every counsel or agent or other person appearing before the Tribunal, has the same privileges and immunities as witnesses and counsel in courts of law.

16 Witnesses' fees, allowances, and expenses

(1) A witness appearing before the Tribunal under a summons is entitled to be paid witnesses' fees, allowances, and expenses in accordance with the scales prescribed by regulations under the Criminal Procedure Act 2011.

(2) The person requiring attendance of the witness must pay or tender to the witness the fees, allowances, and expenses at the time the summons is served, or at some other reasonable time before the hearing.

Schedule 2 clause 16(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

17 Decisions of Tribunal

(1) If the Tribunal consists of more than 1 member on an appeal or matter, the decision on it must be a majority decision.

(2) If the members are evenly divided, the appeal or matter must be determined in favour of the appellant or affected person.

(3) A decision of the Tribunal must be given in writing, and include reasons both for the decision and for any minority view.

(4) An interim oral decision may be given if the Tribunal considers it necessary in the circumstances, but the decision must subsequently be put in writing and subclause (3) applies accordingly.

(5) The Tribunal must notify, and provide a copy of its decision to, the appellant or affected person and the Minister, the refugee and protection officer, or the chief executive (as the case may be).

(6) A decision of the Tribunal is final once notified to the appellant or affected person.

Compare: 1987 No 74 s 129Q

18 Public access to hearings

(1) Subject to subclauses (2) and (3), every oral hearing is open to the public.

(2) The Tribunal may receive any particular evidence in private, or deliberate in private as to its decision on the appeal or as to any question arising in the course of the proceedings.

(3) If an appeal is brought by a claimant, a refugee or a protected person, or a person formerly recognised as a refugee or a protected person, the Tribunal must conduct the hearing in private.

(4) The Tribunal may make an order prohibiting the publication of any evidence received by it, or any report or description of the proceedings or of any part of the proceedings, in respect of any appeal or matter before the Tribunal.

(5) This clause is subject to section 259.

19 Publication of decisions

(1) Subject to subclauses (2) and (4), the Tribunal must publish its decisions.

(2) Any publication for research purposes by the Tribunal of a decision made by it in relation to refugee or protection appeals or matters, other than publication to persons described in subclause (3), must be edited in a way so as to remove—

(a) the name of the appellant or affected person; and

(b) any particulars likely to lead to the identification of the appellant or affected person.

(3) Subclause (2) does not apply to publication—

(a) to persons involved in the appeal or matter; or

(b) to persons involved in the administration of this Act; or

(c) permitted under section 151.

(4) The Tribunal may, in any other case, edit the decision in such a way as to remove the name of the appellant or any other person, and any particulars likely to lead to the identification of the appellant or other person, before publishing it to persons other than persons involved in the appeal or involved in the administration of this Act.

(5) This clause is subject to section 259.

20 Correction of errors

(1) The Tribunal may correct a decision it gives to the extent necessary to rectify—

(a) a clerical mistake; or

(b) an error arising from an accidental slip or omission; or

(c) a material miscalculation of figures or material mistake in the description of any person, thing, or matter referred to; or

(d) a defect of form.

(2) A correction may be made on application by a party, or on the Tribunal's own motion.

21 Tribunal to have seal

The Tribunal must have a seal, which must be judicially noticed in all courts and for all purposes.

Schedule 3
Enactments amended

s 406(1)

Aviation Crimes Act 1972 (1972 No 137)

Section 21: omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Births, Deaths, Marriages, and Relationships Registration Act 1995 (1995 No 16)

Section 9(1)(b): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Paragraph (b) of the definition of **eligible person** in section 21: omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Paragraph (a)(iii) of the definition of **eligible adult** in section 27A: omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Paragraph (a)(iii) of the definition of **eligible child** in section 27A: omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Section 78D(4)(b): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Item relating to Department of Labour in Schedule 1A: omit from the item relating to Death information "limited term permits or" and substitute "temporary entry class".

Care of Children Act 2004 (2004 No 90)

Section 106(2)(a): omit "political refugees or political asylum" and substitute "refugees or protected persons".

Children, Young Persons, and Their Families Act 1989 (1989 No 24)

Section 244: repeal and substitute:

244 Immigration Act 2009 (other than sections 342 to 354) not affected

Nothing in sections 214 to 243 limits or affects any provision of the Immigration Act 2009 other than sections 342 to 354 (offence provisions) of that Act.

Citizenship Act 1977 (1977 No 61)

Section 3(2B)(a) and (b): omit "Immigration Act 1987" and substitute "Immigration Act 2009" in each case.

Section 6(1)(b)(ii) and (6)(b): omit "Immigration Act 1987" and substitute "Immigration Act 2009" in each case.

Section 8(2)(a) and (b): omit "Immigration Act 1987" and substitute "Immigration Act 2009" in each case.

Section 8(3)(a): repeal and substitute:

Citizenship Act 1977 (1977 No 61)—*continued*

(a) conditions have been imposed under the Immigration Act 2009 on the person's entitlement to reside in New Zealand indefinitely; and

Section 8(3)(b): omit "requirements" and substitute "conditions".

Section 8(7)(a)(ii): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Section 26B(1): omit "Department of Labour" and substitute "department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Immigration Act 2009".

Section 26B(1): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Citizenship Amendment Act 2005 (2005 No 43)

Section 17(2)(d)(i): repeal and substitute:

(i) includes time spent in New Zealand before the commencement of the Immigration Act 2009 while holding a valid immigration permit or being exempt from the requirement to hold a permit, and time spent in New Zealand after the commencement of that Act while holding a valid visa; but

Section 17(3)(b): repeal and substitute:

(b) became so entitled on or after the date of commencement of this Act pursuant to an application made under the Immigration Act 1987 or the Immigration Act 2009.

Citizenship (Western Samoa) Act 1982 (1982 No 11)

Section 7(1)(b)(ii): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Section 8(2): omit "section 7 of the Immigration Act 1987" and substitute "section 15 of the Immigration Act 2009".

Civil Aviation Act 1990 (1990 No 98)

Section 53A(1)(b): omit "a permanent resident of" and substitute "normally resident in".

Corrections Act 2004 (2004 No 50)

Section 3(1): omit "Immigration Act 1987" from paragraph (c)(ii) of the definition of **offender** and substitute "Immigration Act 2009".

Section 66(1) and (2): omit "Immigration Act 1987" and substitute "Immigration Act 2009" in each case.

Section 181(1): repeal and substitute:

Corrections Act 2004 (2004 No 50)—*continued*

(1) The purpose of this section is to facilitate the disclosure of information by the department to the department of State for the time being responsible for the administration of the Immigration Act 2009 (the **responsible department**), for the purpose of assisting the Minister of Immigration or an immigration officer to exercise any power conferred by that Act to determine whether a person is liable for deportation or to deport any person.

Section 181(2), (4), and (5): omit "Department of Labour" in each place where it appears and substitute in each case "responsible department".

Section 203(a): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980 (1980 No 44)

Section 17: omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Crimes of Torture Act 1989 (1989 No 106)

Section 16: omit "Immigration Act 1987" from paragraph (g) of the definition of **place of detention** and substitute "Immigration Act 2009".

Customs and Excise Act 1996 (1996 No 27)

Section 32B: omit "Immigration Act 1987" in each place where it appears and substitute in each case "Immigration Act 2009".

Section 175C(1)(b)(iv): repeal and substitute:

(iv) section 342(1)(c) or 345(1) of the Immigration Act 2009:

Section 280(4): repeal and substitute:

(4) Nothing in subsection (3) applies in respect of persons who are exempted by regulations or a special direction made under the Immigration Act 2009 from, as the case may require, the requirement to—

(a) apply for a visa or entry permission in the prescribed manner under section 103(1)(b), (c), and (d) of that Act; or

(b) complete documentation on departure from New Zealand under section 119(1)(c) of that Act.

Education Act 1964 (1964 No 135)

Section 2(1): repeal the definition of **domestic student** and substitute:

domestic student, at any time, means a person who is then—

(a) a New Zealand citizen; or

(b) the holder of a residence class visa granted under the Immigration Act 2009; or

(c) a person of a class or description of persons required by the Minister, by notice in the *Gazette*, to be treated as if they are not foreign students

Education Act 1989 (1989 No 80)

Section 2(1): repeal the definition of **domestic student** and substitute:

> **domestic student**, at any time, means a person who is then—
>
> (a) a New Zealand citizen; or
>
> (b) the holder of a residence class visa granted under the Immigration Act 2009 who satisfies the criteria (if any) prescribed by regulations made under subsection (4); or
>
> (c) a person of a class or description of persons required by the Minister, by notice in the *Gazette*, to be treated as if they are not foreign students

Section 2(4): omit "residence permit under the Immigration Act 1987" and substitute "residence class visa granted under the Immigration Act 2009".

Section 60: repeal the definition of **foreign student** and substitute:

> **foreign student** means a person who is not a New Zealand citizen and is—
>
> (a) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or
>
> (b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately by or within a specified time; or
>
> (c) treated for the purposes of that Act as being unlawfully in New Zealand

Section 103(1)(e): repeal and substitute:

> (e) is not a New Zealand citizen, and is—
>
> (i) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or
>
> (ii) a person obliged by or under that Act or any other enactment to leave New Zealand immediately by or within a specified time (being a time that, when specified, was less than 12 months); or
>
> (iii) treated for the purposes of that Act as being unlawfully in New Zealand—

Section 159(1): repeal the definition of **domestic student** and substitute:

> **domestic student**, at any time, means a person who is then—
>
> (a) a New Zealand citizen; or
>
> (b) the holder of a residence class visa granted under the Immigration Act 2009 who satisfies the criteria (if any) prescribed by regulations made under subsection (4); or
>
> (c) a person of a class or description of persons required by the Minister, by notice in the *Gazette*, to be treated as if they are not foreign students

Section 159(4): omit "residence permit under the Immigration Act 1987" and substitute "residence class visa granted under the Immigration Act 2009".

Education Act 1989 (1989 No 80)—*continued*

Section 236B(1): omit "paragraph (a) of the definition of that term in section 2(1) of the Immigration Act 1987" and substitute "section 4 of the Immigration Act 2009".

Electoral Act 1993 (1993 No 87)

Section 73(a) and (b): repeal and substitute:

(a) resides in New Zealand; and

(b) is not—

(i) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or

(ii) a person obliged by or under that Act to leave New Zealand immediately or within a specified time; or

(iii) treated for the purposes of that Act as being unlawfully in New Zealand.

Section 263A: repeal and substitute:

263A Disclosure of immigration information for matching purposes

(1) In this section,—

immigration information, in relation to any person, means—

(a) information concerning—

(i) any person who the chief executive of the responsible department believes is unlawfully in New Zealand; or

(ii) any person who is lawfully in New Zealand but only by virtue of being the holder of a temporary entry class visa of whatever type; and

(b) information that, in relation to any person described in paragraph (a)(i) or (ii), is as follows:

(i) the person's full name:

(ii) any aliases known to be used by that person:

(iii) the person's date of birth:

(iv) the person's address (if known):

(v) the expiry date of any visa held by the person

responsible department means the department of State that is, with the authority of the Prime Minister, responsible for the administration of the Immigration Act 2009.

(2) The purpose of this section is to facilitate the disclosure of information from the responsible department to the Chief Registrar for the purposes of—

Electoral Act 1993 (1993 No 87)—*continued*

(a) verifying, for the purposes of this Act, that any person registered as an elector of an electoral district is qualified to be registered as an elector of that electoral district:

(b) verifying that a person registered as an elector is a person who the chief executive of the responsible department believes to be either—

(i) a person who is unlawfully in New Zealand; or

(ii) a person who is lawfully in New Zealand but only by virtue of being the holder of a temporary entry class visa of whatever type.

(3) For the purposes of this section, any officer or employee or agent of the responsible department authorised in that behalf by the chief executive of that department may, at the request of the Chief Registrar, supply to the Chief Registrar any immigration information held by that department.

(4) If, in relation to any person, immigration information is supplied to the Chief Registrar pursuant to subsection (3), the Chief Registrar may cause a comparison of that information to be made with any information that is held by the Chief Registrar and that relates to that person.

(5) If the result of a comparison carried out pursuant to subsection (4) indicates that any person on the electoral roll is—

(a) a person who the chief executive of the responsible department believes is unlawfully in New Zealand; or

(b) a person who is lawfully in New Zealand but only by virtue of being the holder of a temporary entry class visa of whatever type,—

the Chief Registrar must advise the Registrar of the electoral district in which that person is registered as an elector accordingly.

(6) Where any Registrar receives advice from the Chief Registrar under subsection (5) that, in relation to any person, either of the circumstances referred to in subsection (5) applies, the Registrar must, under section 96, object to the name of that person being on the roll for the district.

Electronic Transactions Act 2002 (2002 No 35)

Item (14) in Part 4 of the Schedule: repeal and substitute:

(14) the Refugee Status Appeals Authority, the Removal Review Authority, and the Residence Review Board continued by, and the Immigration and Protection Tribunal established under, the Immigration Act 2009:

Extradition Act 1999 (1999 No 55)

Section 91: omit "**permit**" and substitute "**visa**" in the section heading.

Section 91(1): omit "permit under the Immigration Act 1987" and substitute "visa under the Immigration Act 2009".

Extradition Act 1999 (1999 No 55)—*continued*

Section 91(2): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Section 94(3): repeal and substitute:

(3) If the Minister issues a certificate, the Minister may, if he or she thinks fit, refer the person's case to the Minister of Immigration for consideration under section 61 of the Immigration Act 2009, and in that case that section applies for the purposes of this section as if the person were a person required to hold a visa under that Act to be in New Zealand.

Section 94(4): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Section 94(5)(a): omit "permit" and substitute "visa".

Section 96(8): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Section 107: omit "**Immigration Act 1987**" and substitute "**Immigration Act 2009**" in the section heading.

Section 107: omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Fisheries Act 1996 (1996 No 88)

Section 57G(1)(e): repeal and substitute:

(e) none of the individuals with control of the relevant overseas person are individuals of the kind referred to in section 15 or 16 of the Immigration Act 2009 (which list certain persons not eligible for visas or entry permission under that Act):

Section 57I: omit "**Immigration Act 1987**" and substitute "**Immigration Act 2009**" in the section heading.

Section 57I(2): repeal and substitute:

(2) For the purposes of section 57G(1)(e), an individual is not an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009 if a special direction referred to in section 17(1)(a) of that Act has been made permitting a visa and entry permission to be granted to that individual under that Act.

Section 103(5)(a): omit "a work permit under the Immigration Act 1987" and substitute "a temporary entry class visa with conditions that allow the person to work under the Immigration Act 2009".

Government Communications Security Bureau Act 2003 (2003 No 9)

Section 4: omit "residence permit under the Immigration Act 1987" from the definition of **permanent resident** and substitute "residence class visa under the Immigration Act 2009".

Habeas Corpus Act 2001 (2001 No 31)

Section 8(b): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Section 8(c): repeal and substitute:

Habeas Corpus Act 2001 (2001 No 31)—*continued*

(c) the chief executive of the department of State that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Immigration Act 2009, if the detained person is alleged to be illegally detained in custody following the exercise of powers under that Act; or

Health Act 1956 (1956 No 65)

Section 99(1)(b): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Immigration Advisers Licensing Act 2007 (2007 No 15)

Section 5: repeal the definitions of **immigration application or request** and **immigration matter** and substitute:

immigration application or request means the putting forward of any application, request, claim, appeal, or other approach seeking to have the Minister, the Department, the Immigration and Protection Tribunal, or an immigration officer or a refugee and protection officer deal with an immigration matter

immigration matter means any matter arising under or concerning the application of the Immigration Act 2009 (including any regulations or instructions made under that Act); and includes—

(a) an application or potential application for a residence class visa, temporary entry class visa, or transit visa:

(b) a request or potential request for a special direction:

(c) a claim for recognition as a refugee or a protected person, and any related appeal or matter:

(d) a matter relating to immigration sponsorship:

(e) a matter relating to an immigration obligation:

(f) an appeal in relation to an immigration matter

Section 5: repeal the definition of **permit**.

Section 5: insert "protected persons," after "refugees," in the definition of **settlement services** (twice).

Section 5: repeal the definition of **visa** and substitute:

visa means a visa granted under the Immigration Act 2009

Section 7(b)(ii): repeal and substitute:

(ii) directing a person to the Minister or the Department, or to an immigration officer or a refugee and protection officer (within the meaning of the Immigration Act 2009), or to a list of licensed immigration advisers; or

Section 9(2): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Immigration Advisers Licensing Act 2007 (2007 No 15)—*continued*

Section 11(h): omit and substitute:

(h) persons who provide—

(i) immigration advice offshore; and

(ii) advice only in respect of applications for temporary entry class visas with conditions authorising study in New Zealand:

Section 15(1)(c) and (d): repeal and substitute:

(c) has been convicted of an offence against the Immigration Act 2009, the Immigration Act 1987, or the Immigration Act 1964; or

(d) has been removed or deported from New Zealand under the Immigration Act 2009, the Immigration Act 1987, or the Immigration Act 1964; or

Section 15(2): add:

(c) any immigration officer or refugee and protection officer (as defined in the Immigration Act 2009).

Section 91: omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Income Tax Act 2007 (2007 No 97)

Paragraph (d) of the definition of **non-resident crew member** in section CW 21(2): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Paragraph (c) of the definition of **New Zealand resident** in section MA 8: repeal and substitute:

(c) does not include being lawfully resident in New Zealand only because of holding a temporary entry class visa

Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49)

Section 17(1)(b): repeal and substitute:

(b) is in 1 of the following categories:

(i) a New Zealand citizen:

(ii) a holder of a residence class visa granted under the Immigration Act 2009:

(iii) a person who is a spouse or a partner, child, or other dependant of any person referred to in subparagraph (i) or (ii), and who generally accompanies the person referred to in the subparagraph.

Section 17(5): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Section 127(2): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Section 286(5)(g): repeal and substitute:

(g) Immigration Act 2009:

International Crimes and International Criminal Court Act 2000 (2000 No 26)

Section 150(3): repeal and substitute:

(3) If the Minister issues a certificate, the Minister may refer the person's case to the Minister of Immigration for consideration under section 61 of the Immigration Act 2009, and, in that case, that section applies for the purposes of this section as if the person were a person required to hold a visa under that Act to be in New Zealand.

Section 150(4): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Section 151(a)(i): omit and substitute:

(i) the Minister of Immigration declines to grant a visa under the Immigration Act 2009; and

Section 155: omit "**permit**" and substitute "**visa**" in the section heading.

Section 155: omit "permit under the Immigration Act 1987" and substitute "visa under the Immigration Act 2009".

International War Crimes Tribunals Act 1995 (1995 No 27)

Section 34(4): omit "temporary permit under the Immigration Act 1987" and substitute "limited visa under the Immigration Act 2009".

Judicature Act 1908 (1908 No 89)

Section 56CA: repeal.

KiwiSaver Act 2006 (2006 No 40)

Section 6(1)(b): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Lawyers and Conveyancers Act 2006 (2006 No 1)

Section 335(b) and (c): omit "Immigration Act 1987" and substitute "Immigration Act 2009" in each case.

Legal Services Act 2000 (2000 No 42)

Section 7(1)(j), (k), (l), and (m): repeal and substitute:

(j) proceedings before the Immigration and Protection Tribunal, as established by the Immigration Act 2009, in respect of appeals against decisions to decline to grant recognition as a refugee or a protected person, or decisions to cease to recognise a person as a refugee or a protected person, as provided in sections 194(1) and 195 of that Act, or against liability for deportation arising under section 162 of that Act:

(k) the processing, under Part 5 of the Immigration Act 2009, of any claim for recognition as a refugee or a protected person:

(l) any proceedings before the District Court or High Court following an application made under section 316 or 324 of the Immigration Act 2009:

Legal Services Act 2000 (2000 No 42)—*continued*

(m) any appeal or review proceedings (as defined in section 4 of the Immigration Act 2009) in respect of proceedings or matters to which paragraph (j) or (k) applies:

(ma) any proceedings or application under or in relation to the Immigration Act 1987 for which legal aid could have been granted under any of paragraphs (j), (k), (l), and (m) of this subsection as in force before their repeal by the Immigration Act 2009:

Section 7(4)(f) and (g): repeal and substitute:

(f) any appeal to the Immigration and Protection Tribunal against a decision concerning a residence class visa under section 187 of the Immigration Act 2009 (or any appeal to the Residence Appeal Authority under section 18C of the Immigration Act 1987):

(g) any appeal to the Immigration and Protection Tribunal on humanitarian grounds against liability for deportation by a person liable for deportation under section 154 of the Immigration Act 2009 (or any appeal to the Removal Review Authority under Part 2 of the Immigration Act 1987):

Section 10(1) and (2): repeal and substitute:

(1) Subject to subsection (2), the Agency may not grant legal aid in respect of—

(a) proceedings involving a decision under the Immigration Act 2009 in relation to a person who—

(i) is unlawfully in New Zealand in terms of that Act; or

(ii) is lawfully in New Zealand only by being the holder of a temporary entry class visa granted under that Act; or

(iii) is not in New Zealand and—

(A) is not a New Zealand citizen; or

(B) does not hold a residence class visa granted under that Act:

(b) proceedings involving a decision or matter under the Immigration Act 1987 in relation to a person who—

(i) was unlawfully in New Zealand in terms of that Act; or

(ii) not having been granted legal aid for the purpose of any particular proceedings in New Zealand before the person arrived in New Zealand, was lawfully in New Zealand only by virtue of being the holder of a temporary permit or a limited purposes permit.

(2) Subsection (1) does not apply in respect of—

(a) proceedings referred to in subsection (1)(b) for which a person was granted legal aid before the date fixed under section 2(1) of the Immigration Act 2009 for the coming into force of that Act; or

Legal Services Act 2000 (2000 No 42)—*continued*

(b) proceedings specified in section 7(1)(j) to (ma) of this Act.

Lincoln University Act 1961 (1961 No 52)

Section 2(1): repeal the definition of **foreign student** and substitute:

foreign student means a person who is not a New Zealand citizen and is—

(a) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or

(b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or

(c) treated for the purposes of that Act as being unlawfully in New Zealand

Maritime Crimes Act 1999 (1999 No 56)

Section 19: repeal and substitute:

19 Immigration Act 2009 not limited

This Act does not limit the Immigration Act 2009.

Maritime Security Act 2004 (2004 No 16)

Section 59(1)(a)(ii)(D): repeal and substitute:

(D) the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Immigration Act 2009; and

Massey University Act 1963 (1963 No 7)

Section 2(1): repeal the definition of **foreign student** and substitute:

foreign student means a person who is not a New Zealand citizen and is—

(a) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or

(b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or

(c) treated for the purposes of that Act as being unlawfully in New Zealand

Mutual Assistance in Criminal Matters Act 1992 (1992 No 86)

Section 13(1): omit "temporary permit under the Immigration Act 1987" and substitute "temporary visa under the Immigration Act 2009".

Section 42(5): omit "temporary permit under the Immigration Act 1987" and substitute "temporary visa under the Immigration Act 2009".

New Zealand Security Intelligence Service Act 1969 (1969 No 24)

Section 2: repeal the definition of **permanent resident** and substitute:

New Zealand Security Intelligence Service Act 1969 (1969 No 24)—*continued*

permanent resident means a person who is in New Zealand and who is the holder, or is deemed to be the holder, of a residence class visa under the Immigration Act 2009

Section 4(1)(bc): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Official Information Act 1982 (1982 No 156)

Section 2: repeal the definition of **permanent resident of New Zealand** and substitute:

permanent resident of New Zealand means a person who—

(a) resides in New Zealand; and

(b) is not—

(i) a person to whom section 15 or 16 of the Immigration Act 2009 applies (except if the person has been granted a visa or entry permission in accordance with section 17 of that Act); or

(ii) a person obliged by or under that Act to leave New Zealand immediately or within a specified time; or

(iii) treated for the purposes of that Act as being unlawfully in New Zealand

Overseas Investment Act 2005 (2005 No 82)

Section 6(2)(a): repeal and substitute:

(a) holds a residence class visa granted under the Immigration Act 2009; and

Section 16(1)(d): repeal and substitute:

(d) the relevant overseas person is not, or (if that person is not an individual) each individual with control of the relevant overseas person is not, an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 (which sections list certain persons not eligible for visas or entry permission under that Act):

Section 18(1)(d): repeal and substitute:

(d) the relevant overseas person is not, or (if that person is not an individual) each individual with control of the relevant overseas person is not, an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 (which sections list certain persons not eligible for visas or entry permission under that Act).

Section 19: omit "**Immigration Act 1987**" and substitute "**Immigration Act 2009**" in the section heading.

Section 19(2): repeal and substitute:

Overseas Investment Act 2005 (2005 No 82)—*continued*

(2) For the purposes of sections 16(1)(d) and 18(1)(d), an individual is not an individual of a kind referred to in section 15 or 16 of the Immigration Act 2009 if a special direction referred to in section 17(1)(a) of that Act has been made permitting a visa or entry permission to be granted to that individual.

Parole Act 2002 (2002 No 10)

Section 55: repeal and substitute:

55 Offenders may be released early for deportation

(1) The Minister of Immigration may, in the Minister's absolute discretion as defined in section 11 of the Immigration Act 2009, give the manager of a prison a written notice ordering the release of an offender into the custody of a constable or immigration officer if subsections (3) to (7) apply to the offender.

(2) The chief executive may give the manager of a prison a written notice ordering the release of an offender into the custody of a constable or immigration officer at a time within 28 days preceding the offender's statutory release date if subsections (3) to (6) apply to the offender. This subsection does not limit subsection (1).

(3) The offender must be serving a sentence of imprisonment in the prison.

(4) The offender—

(a) must have been sentenced to 2 years or less; or

(b) must have—

(i) been sentenced to more than 2 years; and

(ii) served either 2 years or one-third of the sentence, whichever is shorter; or

(c) must have—

(i) received an indeterminate sentence; and

(ii) served at least 2 years.

(5) The offender must be—

(a) liable for deportation under section 154 of the Immigration Act 2009; or

(b) the subject of a deportation order under section 163 of the Immigration Act 2009; or

(c) the subject of a deportation liability notice under the Immigration Act 2009; or

(d) the subject of a removal order under the Immigration Act 1987; or

(e) the subject of a deportation order under the Immigration Act 1987.

(6) The offender must be described by one of the following:

Parole Act 2002 (2002 No 10)—*continued*

(a) he or she has no right of appeal against his or her liability for deportation:

(b) he or she has a right of appeal but has not made an appeal and the time for making an appeal has expired:

(c) he or she made an appeal that has been determined by the upholding of the liability for deportation.

(7) The offender must not pose an undue risk to the safety of the community into which he or she is to be deported, as established to the Minister's satisfaction.

55A Implementation of early release for deportation

(1) A notice under section 55(1) or (2) is sufficient authority for the manager,—

(a) if requested by an immigration officer, to release the offender and deliver him or her into the custody of an immigration officer for detention under section 312 of the Immigration Act 2009; or

(b) if requested by a constable, to release the offender and deliver him or her into the custody of a constable for arrest and detention under section 313 of the Immigration Act 2009.

(2) The offender must be returned to the custody of the manager if the circumstances in section 336(1) of the Immigration Act 2009 arise.

(3) The warrant by which an offender was originally committed to the prison is deemed to be still in force for the purpose of his or her return to custody under subsection (2).

(4) This section applies to an offender returned to custody under subsection (2) until he or she is finally deported.

55B Offenders released early remain offenders under New Zealand law

The following apply to an offender released and deported under sections 55 and 55A:

(a) his or her sentence continues to run; and

(b) he or she is liable to resume serving the sentence if he or she returns to New Zealand before the sentence expiry date.

Passports Act 1992 (1992 No 92)

Section 2: repeal the definition of **refugee** and substitute:

refugee means a person who—

(a) has been—

(i) recognised by a refugee and protection officer or the Immigration and Protection Tribunal as a refugee within the meaning of the Immigration Act 2009; or

Passports Act 1992 (1992 No 92)—*continued*

(ii) recognised outside New Zealand as a refugee under the Refugee Convention (as defined in section 4 of the Immigration Act 2009) and brought to New Zealand under a government mandated programme on the basis of that recognition; or

(iii) determined, before the date fixed under section 2(1) of the Immigration Act 2009 for the coming into force of that Act, to be a refugee in accordance with the Refugee Convention (as defined in section 2(1) of the Immigration Act 1987); or

(iv) granted a permit by the Minister of Immigration or an immigration officer under the Immigration Act 1987 on the basis that he or she was mandated as a refugee by the United Nations High Commissioner for Refugees; or

(v) recognised, before 1 January 1991, as a refugee by the Interdepartmental Committee on Refugees; and

(b) continues to be recognised as a refugee in New Zealand

Pitcairn Trials Act 2002 (2002 No 83)

Section 10: repeal and substitute:

10 Limited visas under Immigration Act 2009 for certain participants in trials

(1) If this section applies to a person, the Minister (as defined in section 4 of the Immigration Act 2009) or an immigration officer may, if he or she thinks fit, grant a limited visa (or a further limited visa, if appropriate) and entry permission to the person under the Immigration Act 2009.

(2) This section applies to a person only if—

(a) the person is a person specified in section 11; and

(b) the person is coming to, or is in, New Zealand; and

(c) the person is not a New Zealand citizen or a person who already holds a visa (other than a transit visa) granted under the Immigration Act 2009; and

(d) the person's presence in New Zealand is or will be necessary or desirable in connection with a purpose specified in section 12.

(3) This section applies whether or not the person concerned applies for, or consents to the granting of, the visa or entry permission, and despite anything to the contrary in any provision of the Immigration Act 2009 that relates to the granting of limited visas.

(4) The grant of a visa or entry permission under this section and the Immigration Act 2009 does not affect the application of that Act to the person concerned.

(5) Subsection (4) is subject to subsection (3) and section 13.

Pitcairn Trials Act 2002 (2002 No 83)—*continued*

Section 13: repeal and substitute:

13 Expiry of limited visa and liability for deportation may be effective immediately upon giving or service of notice

(1) This section applies to the holder of a limited visa (or further limited visa) granted in accordance with section 10 if—

(a) an immigration officer is, under section 84(2) of the Immigration Act 2009 (as applied by section 10 of this Act), to give the holder a notice specifying an expiry date for the visa that is a date earlier than the latest date on which the visa will expire; or

(b) the holder of the visa is determined to be liable for deportation under section 157(1) of the Immigration Act 2009 (as applied by section 10 of this Act).

(2) In the situation in subsection (1)(a), the notice specifying an earlier expiry date for the visa may, despite section 84(2) of the Immigration Act 2009, specify an earlier expiry date that is a date (for example, the date upon which the notice is given to the holder) sooner than 14 days after the notice is given to the holder.

(3) In the situation in subsection (1)(b), the deportation liability notice given under section 170 of the Immigration Act 2009 must notify the holder that the holder is immediately liable for deportation.

Section 14(1)(b): repeal and substitute:

(b) Immigration Act 2009:

Section 62(5)(b) and (7): omit "Immigration Act 1987" and substitute in each case "Immigration Act 2009".

Section 66(4) and (5): omit "Immigration Act 1987" in each place where it appears and substitute in each case "Immigration Act 2009".

Privacy Act 1993 (1993 No 28)

Section 2: repeal the definition of **permanent resident of New Zealand** and substitute:

permanent resident of New Zealand means a person who—

(a) resides in New Zealand; and

(b) is not—

(i) a person to whom section 15 or 16 of the Immigration Act 2009 applies (except if the person has been granted a visa or entry permission in accordance with section 17 of that Act); or

(ii) a person obliged by or under that Act to leave New Zealand immediately or within a specified time; or

Privacy Act 1993 (1993 No 28)—*continued*

(iii) treated for the purposes of that Act as being unlawfully in New Zealand

Section 97: repeal paragraph (g) of the definition of **adverse action** and substitute:

(g) to make a deportation order in relation to the individual, to serve the individual with a deportation liability notice, or to deport the individual from New Zealand

Schedule 3: omit the item relating to the Immigration Act 1987 and substitute:

Immigration Act 2009	Sections 294, 295, 298, 299, and 300

Prostitution Reform Act 2003 (2003 No 28)

Section 19: repeal and substitute:

19 Application of Immigration Act 2009

(1) No visa may be granted under the Immigration Act 2009 to a person on the basis that the person—

(a) has provided, or intends to provide, commercial sexual services; or

(b) has acted, or intends to act, as an operator of a business of prostitution; or

(c) has invested, or intends to invest, in a business of prostitution.

(2) It is a condition of every temporary entry class visa granted under the Immigration Act 2009 that the holder of the visa may not, while in New Zealand,—

(a) provide commercial sexual services; or

(b) act as an operator of a New Zealand business of prostitution; or

(c) invest in a New Zealand business of prostitution.

(3) It is sufficient reason for the Minister of Immigration or an immigration officer to determine that a temporary entry class visa holder is liable for deportation under section 157 of the Immigration Act 2009 if the Minister or the officer believes, on reasonable grounds, that the holder is engaged in any of the things listed in subsection (2)(a) to (c) of this section.

(4) Any conditions of a resident visa are deemed not to have been met and the resident is liable for deportation under section 159 of the Immigration Act 2009 if the Minister of Immigration or an immigration officer determines that the holder of a resident visa acts as an operator of, or invests in, a New Zealand business of prostitution.

(5) This section applies to all visas and permits held and all requirements and conditions imposed under the Immigration Act 1987 or the Immigration Act 2009, whether granted or imposed before or after the commencement of this section.

Ship Registration Act 1992 (1992 No 89)

Section 8(2)(ba) and (c): omit "Immigration Act 1987" and substitute "Immigration Act 2009" in each case.

Social Security Act 1964 (1964 No 136)

Section 74AA(1): repeal and substitute:

(1) A person who applies for a benefit of a kind stated in subsection (2) after 27 May 2007 is not eligible for it unless he or she—

(a) is a New Zealand citizen, or is a person who holds a residence class visa under the Immigration Act 2009; and

(b) is ordinarily resident in New Zealand when he or she first applies for the benefit; and

(c) except in the case of a person who is recognised as a refugee or a protected person in New Zealand under the Immigration Act 2009, has resided continuously in New Zealand for a period of at least 2 years at any one time after the day on which paragraph (a) first applied to him or her.

Section 74A(1): repeal and substitute:

(1) A person is not entitled to receive a benefit who is—

(a) unlawfully resident or present in New Zealand; or

(b) lawfully resident or present in New Zealand but only by virtue of holding a temporary entry class visa.

(1A) Despite subsection (1), the chief executive may grant an emergency benefit under section 61 or temporary additional support under section 61G, or may continue, under section 23 of the Social Security (Working for Families) Amendment Act 2004, a special benefit already granted to the person if the chief executive is satisfied that the person is—

(a) a person lawfully present in New Zealand who is awaiting the outcome of his or her claim for recognition as a refugee or a protected person; or

(b) a person who is recognised as a refugee or a protected person; or

(c) a person applying for a residence class visa under the Immigration Act 2009 who is compelled to remain in New Zealand because of unforeseen circumstances.

Section 74A(3)(b)(ii): omit "one of the permits listed in paragraph (b) of subsection (1)" and substitute "holding a temporary entry class visa".

Section 74A(4): omit "any of paragraphs (c), (d), or (e) of subsection (1)" and substitute "subsection (1A)".

Summary Proceedings Act 1957 (1957 No 87)

Schedule 1, Part 2: omit the item relating to the Immigration Act 1987 and substitute:

Summary Proceedings Act 1957 (1957 No 87)—*continued*

Title of Act	Section of Act	Offence
Immigration Act 2009	342(1)(b)	Using false or misleading document or information
	343(1)(a)	Assisting person to be or remain unlawfully in New Zealand, or breach visa conditions
	343(1)(b)	Assisting person to unlawfully enter New Zealand
	343(1)(c)	Assisting completion of arrival document in false or misleading manner
	345	Improper use of document relating to another person or forged or fraudulently obtained
	348	Modifying form after completion and signing

Tax Administration Act 1994 (1994 No 166)

Section 24I(4): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Trade in Endangered Species Act 1989 (1989 No 18)

Section 28(1): omit "or permanent resident or intending resident" and substitute ", person resident in New Zealand, or person intending to reside in New Zealand".

University of Auckland Act 1961 (1961 No 50)

Section 2(1): repeal the definition of **foreign student** and substitute:

> **foreign student** means a person who is not a New Zealand citizen and is—
>
> (a) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or
>
> (b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or
>
> (c) treated for the purposes of that Act as being unlawfully in New Zealand

University of Canterbury Act 1961 (1961 No 49)

Section 2(1): repeal the definition of **foreign student** and substitute:

> **foreign student** means a person who is not a New Zealand citizen and is—
>
> (a) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or
>
> (b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or
>
> (c) treated for the purposes of that Act as being unlawfully in New Zealand

University of Otago Amendment Act 1961 (1961 No 48)

Section 2(1): repeal the definition of **foreign student** and substitute:

> **foreign student** means a person who is not a New Zealand citizen and is—

University of Otago Amendment Act 1961 (1961 No 48)—*continued*

(a) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or

(b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or

(c) treated for the purposes of that Act as being unlawfully in New Zealand

University of Waikato Act 1963 (1963 No 8)

Section 2(1): repeal the definition of **foreign student** and substitute:

foreign student means a person who is not a New Zealand citizen and is—

(a) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or

(b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or

(c) treated for the purposes of that Act as being unlawfully in New Zealand

Victims' Rights Act 2002 (2002 No 39)

Section 39: repeal and substitute:

39 Notice of proposal to cancel or suspend liability for deportation

(1) The chief executive of the department of State that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Immigration Act 2009 must perform the actions in subsection (2) if—

(a) a person is liable for deportation under the Immigration Act 2009 as a result of any criminal offending; and

(b) the Minister of Immigration is considering cancelling or suspending the person's liability for deportation or the person appeals against his or her liability for deportation to the Immigration and Protection Tribunal.

(2) If subsection (1) applies, the chief executive must—

(a) advise each specified person (as defined in subsection (4)) that—

(i) the Minister is considering suspending or cancelling the liability for deportation of the criminal offender; or

(ii) the criminal offender has appealed against his or her liability for deportation to the Immigration and Protection Tribunal; and

(b) ask the specified person to provide the current address of the victim of the offence to the chief executive if that address—

(i) has been given or forwarded to the specified person under section 31 or 33; and

(ii) has not been forwarded by the specified person under section 33.

Victims' Rights Act 2002 (2002 No 39)—*continued*

(3) Each specified person must, as soon as practicable after receiving a request under subsection (2)(b), consider, respond to, and, if possible, comply with that request.

(4) For the purposes of subsection (2), each of the following persons is a specified person:

(a) the Commissioner of Police:

(b) the chief executive of the Department of Corrections:

(c) the Director-General of Health.

(5) If the victim's address is given to the chief executive under subsection (2),—

(a) the chief executive must, if practicable, give the victim notice that the Minister is considering cancelling or suspending the deportation liability of the offender under section 172 of the Immigration Act 2009; and

(b) if a deportation liability notice has been served and the offender concerned appeals against that liability for deportation on humanitarian grounds under section 206 of that Act, the chief executive must give the victim's address to the Immigration and Protection Tribunal, and that Tribunal must give the victim prior notice of the hearing of the appeal.

(6) Failure to comply with subsection (2) or (5) does not invalidate any decision of the kind referred to in subsection (5)(a) or a decision on an appeal of the kind referred to in subsection (5)(b).

Section 48: repeal and substitute:

48 Victim may make submission on consideration of cancellation or suspension of liability for deportation, or offender's appeal against deportation

A victim to whom this section applies may make submissions to the Minister of Immigration and to the Immigration and Protection Tribunal, in accordance with sections 173 and 208 of the Immigration Act 2009.

Victoria University of Wellington Act 1961 (1961 No 51)

Section 2(1): repeal the definition of **foreign student** and substitute:

foreign student means a person who is not a New Zealand citizen and is—

(a) a person to whom section 15 or 16 of the Immigration Act 2009 applies; or

(b) a person obliged by or under that Act or any other enactment to leave New Zealand immediately or within a specified time; or

(c) treated for the purposes of that Act as being unlawfully in New Zealand

Schedule 4
Regulations, rules, and orders amended

s 406(2)

Corrections Regulations 2005 (SR 2005/53)

Regulation 70(6): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Regulation 184: omit "**Immigration Act 1987**" and substitute "**Immigration Act 2009**" in the regulation heading.

Regulation 184: omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Regulation 188(2): omit "Immigration Act 1987" and substitute "Immigration Act 2009".

Regulation 193(1)(c) and (2): omit "Immigration Act 1987" and substitute in each case "Immigration Act 2009".

Customs and Excise Regulations 1996 (SR 1996/232)

Regulation 2: revoke the definition of **certificate of identity** and substitute:

> **certificate of identity** has the same meaning as in section 4 of the Immigration Act 2009

Diplomatic Privileges (EC) Order 2004 (SR 2004/56)

Clause 3(1): revoke paragraph (a) of the definition of **New Zealand national** and substitute:

> (a) a New Zealand citizen or the holder of a residence class visa under the Immigration Act 2009; and

Clause 3(1): revoke the definition of **permanent resident**.

Diplomatic Privileges (International Criminal Court) Order 2004 (SR 2004/79)

Clause 3: revoke the definition of **permanent resident** and substitute:

> **permanent resident** means a person who is the holder of a residence class visa under the Immigration Act 2009

Health Entitlement Cards Regulations 1993 (SR 1993/169)

Regulation 2(1): revoke the definition of **ordinarily resident in New Zealand** and substitute:

> **ordinarily resident in New Zealand**, in relation to any person, includes a person who the Director-General is satisfied is in the process of claiming recognition as a refugee or a protected person in New Zealand; but does not include any other person—
>
> (a) unlawfully resident or present in New Zealand; or

Health Entitlement Cards Regulations 1993 (SR 1993/169)—*continued*

(b) lawfully resident or present in New Zealand only by virtue of holding a temporary entry class visa or transit visa

Health (Quarantine) Regulations 1983 (SR 1983/52)

Regulation 27: omit "Immigration Act 1964" and substitute "Immigration Act 2009".

Land Transport (Driver Licensing) Rule 1999 (SR 1999/100)

Rule 10(1)(f): omit "section 2(1) of the Immigration Act 1987" and substitute "section 4 of the Immigration Act 2009".

Land Transport Rule 32006/1: Frontal Impact 2001

Definition of **Immigrant's vehicle** in Part 2: revoke and substitute:

immigrant's vehicle means a Class MA, MB, or MC motor vehicle that is—

(a) imported into New Zealand by a New Zealand citizen, or a New Zealand resident, who has lived outside New Zealand for a period of not less than 21 months before the date of his or her arrival in or return to New Zealand; and

(b) identified in writing and in accordance with Schedule 1 by the Director, or by an organisation appointed by the Director under 4.6(5), as being an immigrant's vehicle

Definition of **New Zealand resident** in Part 2: revoke and substitute:

New Zealand resident means a person who holds a residence class visa under the Immigration Act 2009

Clause 2(a) of Schedule 1: revoke and substitute:

(a) be a New Zealand citizen or a New Zealand resident; and

Clause 3(a) of Schedule 1: revoke and substitute:

(a) be a New Zealand citizen or a New Zealand resident; and

Sale of Liquor Regulations 1990 (SR 1990/61)

Regulation 21C(f): omit "section 2(1) of the Immigration Act 1987" and substitute "section 4 of the Immigration Act 2009".

Regulation 21C(g): revoke.

Social Security (SuperGold Card) Regulations 2007 (SR 2007/209)

Regulation 9(b): revoke and substitute:

(b) is the holder of a residence class visa granted under the Immigration Act 2009.

Social Security (Temporary Additional Support) Regulations 2005 (SR 2005/334)

Regulation 10A: revoke and substitute:

Social Security (Temporary Additional Support) Regulations 2005 (SR 2005/334) *—continued*

10A Variation of upper limit for persons awaiting decision on refugee or protected person claims, refugees and protected persons, and certain applicants for residence class visas

(1) Subclause (2) applies, instead of regulation 10(3), when calculating under regulation 10(1) the amount of temporary additional support that may be granted per week to a person who the chief executive is satisfied is—

(a) a person of the kind referred to in section 74A(1)(c) of the Act (a person lawfully present in New Zealand awaiting the outcome of his or her claim for recognition as a refugee or a protected person in New Zealand); or

(b) a person referred to in section 74A(1)(d) of the Act (a person who is recognised as a refugee or a protected person in New Zealand); or

(c) a person referred to in section 74A(1)(e) of the Act (a person applying for a residence class visa under the Immigration Act 2009 who is compelled to remain in New Zealand through some unforeseen circumstances).

(2) The **upper limit** is the higher of—

(a) the appropriate maximum rate of accommodation supplement that would be applicable if section 74A(1) of the Act did not prohibit the person receiving a benefit; and

(b) the upper limit in regulation 10(3).

Student Allowances Regulations 1998 (SR 1998/277)

Regulation 12(1)(a): revoke and substitute:

(a) he or she—

(i) is a New Zealand citizen; or

(ii) satisfies the chief executive that he or she is ordinarily resident in New Zealand, has lived in New Zealand for at least 2 years, and has been entitled under the Immigration Act 2009 to reside indefinitely in New Zealand for at least 2 years; or

(iii) satisfies the chief executive that he or she is a refugee or a protected person and is entitled under the Immigration Act 2009 to reside indefinitely in New Zealand; and

United Nations Sanctions (Al-Qaida and Taliban) Regulations 2007 (SR 2007/356)

Regulation 13(2) and (3): revoke and substitute:

United Nations Sanctions (Al-Qaida and Taliban) Regulations 2007 (SR 2007/356)—*continued*

(2) A visa may be granted under the Immigration Act 2009 to a person who is a specified entity only on the advice of the Secretary of Foreign Affairs and Trade that the visa is consistent with subclause (1).

(3) This regulation operates in addition to the requirements of the Immigration Act 2009 and any regulations made under that Act.

United Nations Sanctions (Côte d'Ivoire) Regulations 2005 (SR 2005/339)

Regulation 13(3) and (4): revoke and substitute:

(3) A visa may be granted under the Immigration Act 2009 to a designated person only on the advice of the Secretary of Foreign Affairs and Trade that the visa is consistent with subclause (1).

(4) This regulation operates in addition to the requirements of the Immigration Act 2009 and of any regulations made under that Act.

United Nations Sanctions (Democratic People's Republic of Korea) Regulations 2006 (SR 2006/382)

Regulation 17(3) and (4): revoke and substitute:

(3) A visa may be granted under the Immigration Act 2009 to a designated person only on the advice of the Secretary of Foreign Affairs and Trade that the visa is consistent with subclause (1).

(4) This regulation operates in addition to the requirements of the Immigration Act 2009 and any regulations made under that Act.

United Nations Sanctions (Democratic Republic of the Congo) Regulations 2004 (SR 2004/465)

Regulation 12D(4) and (5): revoke and substitute:

(4) A visa may be granted under the Immigration Act 2009 to a designated person only on the advice of the Secretary of Foreign Affairs and Trade that the visa is consistent with subclause (1).

(5) This regulation operates in addition to the requirements of the Immigration Act 2009 and any regulations made under that Act.

United Nations Sanctions (Iran) Regulations 2007 (SR 2007/74)

Regulation 16B(4) and (5): revoke and substitute:

(4) A visa may be granted under the Immigration Act 2009 to a designated person only on the advice of the Secretary of Foreign Affairs and Trade that the visa is consistent with subclause (1).

(5) This regulation operates in addition to the requirements of the Immigration Act 2009 and any regulations made under that Act.

United Nations Sanctions (Lebanon) Regulations 2008 (SR 2008/262)

Regulation 17(4) and (5): revoke and substitute:

(4) A visa may be granted under the Immigration Act 2009 to a designated person only on the advice of the Secretary of Foreign Affairs and Trade that the visa is consistent with subclause (1).

(5) This regulation operates in addition to the requirements of the Immigration Act 2009 and any regulations made under that Act.

United Nations Sanctions (Liberia) Regulations 2001 (SR 2001/134)

Regulation 16(2) and (3): revoke and substitute:

(2) A visa may be granted under the Immigration Act 2009 to a designated person only on the advice of the Secretary of Foreign Affairs and Trade that the visa is consistent with subclause (1).

(3) This regulation operates in addition to the requirements of the Immigration Act 2009 and of any regulations made under that Act.

United Nations Sanctions (Sierra Leone) Regulations 1997 (SR 1997/281)

Regulation 11(3A) and (4): revoke and substitute:

(3A) A visa may be granted under the Immigration Act 2009 to a designated person only on the advice of the Secretary of Foreign Affairs and Trade that the visa is consistent with subclause (1).

(4) This regulation operates in addition to the requirements of the Immigration Act 2009 and any regulations made under that Act.

United Nations Sanctions (Somalia) Regulations 1992 (SR 1992/42)

Regulation 10F(4) and (5): revoke and substitute:

(4) A visa may be granted under the Immigration Act 2009 to a designated person only on the advice of the Secretary of Foreign Affairs and Trade that the visa is consistent with subclause (1).

(5) This regulation operates in addition to the requirements of the Immigration Act 2009 and any regulations made under that Act.

United Nations Sanctions (Sudan) Regulations 2004 (SR 2004/466)

Regulation 13D(4) and (5): revoke and substitute:

(4) A visa may be granted under the Immigration Act 2009 to a designated person only on the advice of the Secretary of Foreign Affairs and Trade that the visa is consistent with subclause (1).

(5) This regulation operates in addition to the requirements of the Immigration Act 2009 and any regulations made under that Act.

Schedule 5
Visas corresponding to visas and permits held under former Act

s 415

Part 1
Visas corresponding to visas held under former Act by persons who are outside New Zealand

Visa held under former Act	Visa holder is deemed to hold under this Act
Residence visa— (a) allowing a single journey to New Zealand; and (b) of limited duration	Resident visa— (a) allowing travel to New Zealand for a single journey within the period or until the date specified in the residence visa issued under the former Act; and (b) if the holder is granted entry permission, allowing stay in New Zealand
Residence visa— (a) allowing a single journey to New Zealand; and (b) of limited duration; and (c) that specifies requirements are to be imposed under section 18A of the former Act on grant of permit	Resident visa— (a) allowing travel to New Zealand for a single journey within the period or until the date specified in the residence visa issued under the former Act; and (b) if the holder is granted entry permission, allowing stay in New Zealand subject to conditions equivalent to the requirements specified in the residence visa issued under the former Act
Returning resident's visa of limited duration and residence visa— (a) allowing a single journey to New Zealand; and (b) of limited duration	Resident visa— (a) allowing travel to New Zealand for a single journey within the period or until the date specified in the residence visa issued under the former Act; and (b) if the holder is granted entry permission,— (i) allowing stay in New Zealand; and (ii) allowing further travel to New Zealand for an unlimited number of journeys within the period (calculated from the date entry permission is granted) or until the date specified in the returning resident's visa issued under the former Act
Returning resident's visa of limited duration	Resident visa— (a) allowing travel to New Zealand for an unlimited number of journeys within the period or until the date specified in the returning resident's visa issued under the former Act; and (b) allowing the holder to enter New Zealand; and (c) allowing the holder to stay in New Zealand
Returning resident's visa of limited duration that specifies requirements are to be imposed under section 18A of the former Act on grant of permit	Resident visa— (a) allowing travel to New Zealand for an unlimited number of journeys within the period or until the date specified in the returning resident's visa issued under the former Act; and

Visa held under former Act	Visa holder is deemed to hold under this Act
	(b) allowing the holder to enter New Zealand; and (c) allowing stay in New Zealand subject to conditions equivalent to the requirements specified in the returning resident's visa issued under the former Act
Returning resident's visa of indefinite duration	Permanent resident visa
Visitor's visa	Temporary visa— (a) allowing travel to New Zealand— (i) within the period or until the date specified in the visitor's visa issued under the former Act; or (ii) for the number of journeys specified in the visitor's visa issued under the former Act and within the period or until the date specified in that visa; and (b) if the holder is granted entry permission— (i) allowing stay in New Zealand for the period or until the date specified in the visitor's visa issued under the former Act; and (ii) subject to the condition that the holder does not work in New Zealand (including the territorial sea or the exclusive economic zone of New Zealand) or study, unless the conditions of the visitor's visa issued under the former Act provided otherwise; and (iii) subject to conditions equivalent to any conditions specified in the visitor's visa issued under the former Act
Student visa	Temporary visa— (a) allowing travel to New Zealand— (i) within the period or until the date specified in the student visa issued under the former Act; or (ii) for the number of journeys specified in the student visa issued under the former Act and within the period or until the date specified in that visa; and (b) if the holder is granted entry permission, allowing the holder to study subject to conditions equivalent to any conditions specified in the student visa issued under the former Act
Work visa	Temporary visa— (a) allowing travel to New Zealand— (i) within the period or until the date specified in the work visa issued under the former Act; or (ii) for the number of journeys specified in the work visa issued under the former Act and

Visa held under former Act	Visa holder is deemed to hold under this Act
	within the period or until the date specified in that visa; and (b) if the holder is granted entry permission, allowing the holder to work in New Zealand (including the territorial sea or the exclusive economic zone of New Zealand) subject to conditions equivalent to any conditions specified in the work visa issued under the former Act
Limited purpose visa	Limited visa— (a) allowing travel to New Zealand— (i) within the period or until the date specified in the limited purpose visa issued under the former Act; or (ii) for the number of journeys specified in the limited purpose visa issued under the former Act and within the period or until the date specified in that visa; and (b) if the holder is granted entry permission, allowing stay in New Zealand— (i) only for the period or until the date specified in the limited purpose visa issued under the former Act; and (ii) only for the purpose for which the limited purpose visa issued under the former Act was issued; and (iii) subject to conditions equivalent to any conditions specified in the limited purpose visa issued under the former Act
Transit visa	Transit visa allowing travel to New Zealand— (a) within the period or until the date specified in the transit visa issued under the former Act; or (b) for the number of journeys specified in the transit visa issued under the former Act and within the period or until the date specified in that visa
Temporary visa granted for the purpose of the Mutual Assistance in Criminal Matters Act 1992	Limited visa— (a) deemed to be granted under section 72 of this Act; and (b) allowing travel to New Zealand within the period or until the date specified in the temporary visa issued under the former Act; and (c) subject to conditions equivalent to any conditions specified in the temporary visa issued under the former Act

Part 2
Visas corresponding to visas and permits held under former Act by persons who are onshore

Visa or permit held under former Act	Visa holder is deemed to hold under this Act
Residence permit only	Resident visa allowing stay in New Zealand
Residence permit subject to requirements imposed under section 18A of the former Act	Resident visa allowing stay in New Zealand subject to conditions equivalent to the requirements imposed under section 18A of the former Act
Residence permit and returning resident's visa of limited duration	Resident visa— (a) allowing stay in New Zealand; and (b) allowing travel to New Zealand for an unlimited number of journeys within the period or until the date specified in the returning resident's visa issued under the former Act; and (c) allowing entry to New Zealand within the period or until the date specified in the returning resident's visa issued under the former Act
Residence permit subject to requirements imposed under section 18A of the former Act and returning resident's visa of limited duration	Resident visa— (a) allowing stay in New Zealand; and (b) subject to conditions equivalent to the requirements imposed under section 18A of the former Act; and (c) allowing travel to New Zealand for an unlimited number of journeys within the period or until the date specified in the returning resident's visa issued under the former Act; and (d) allowing entry to New Zealand within the period or until the date specified in the returning resident's visa issued under the former Act
Residence permit and returning resident's visa of indefinite duration	Permanent resident visa
Visitor's permit only	Temporary visa— (a) allowing stay in New Zealand for the period or until the date specified in the visitor's permit granted under the former Act; and (b) subject to the condition that the holder does not work in New Zealand (including the territorial sea or the exclusive economic zone of New Zealand) or study, unless the conditions of the visitor's permit granted under the former Act provided otherwise; and (c) subject to conditions equivalent to the conditions of the visitor's permit granted under the former Act
Visitor's permit and visitor's visa	Temporary visa— (a) allowing stay in New Zealand for the period or until the date specified in the visitor's permit granted under the former Act; and

Visa or permit held under former Act	Visa holder is deemed to hold under this Act
	(b) subject to the condition that the holder does not work in New Zealand (including the territorial sea or the exclusive economic zone of New Zealand) or study, unless the conditions of the visitor's permit granted under the former Act provided otherwise; and (c) subject to conditions equivalent to the conditions of the visitor's permit granted under the former Act; and (d) allowing travel to New Zealand— (i) within the period or until the date specified in the visitor's visa issued under the former Act; or (ii) for the number of journeys specified in the visitor's visa issued under the former Act and within the period or until the date specified in that visa
Student permit only	Temporary visa— (a) allowing stay in New Zealand for the period or until the date specified in the student permit granted under the former Act; and (b) allowing the holder to study; and (c) subject to conditions equivalent to the conditions of the student permit granted under the former Act
Student permit and student visa	Temporary visa— (a) allowing stay in New Zealand for the period or until the date specified in the student permit granted under the former Act; and (b) allowing the holder to study; and (c) subject to conditions equivalent to the conditions of the student permit granted under the former Act; and (d) allowing travel to New Zealand— (i) within the period or until the date specified in the student visa issued under the former Act; or (ii) for the number of journeys specified in the student visa issued under the former Act and within the period or until the date specified in that visa
Work permit only	Temporary visa— (a) allowing stay in New Zealand for the period or until the date specified in the work permit granted under the former Act; and (b) allowing the holder to work in New Zealand (including the territorial sea or the exclusive economic zone of New Zealand); and (c) subject to conditions equivalent to the conditions of the work permit granted under the former Act

Visa or permit held under former Act	Visa holder is deemed to hold under this Act
Work permit and work visa	Temporary visa— (a) allowing stay in New Zealand for the period or until the date specified in the work permit granted under the former Act; and (b) allowing the holder to work in New Zealand (including the territorial sea or the exclusive economic zone of New Zealand); and (c) subject to conditions equivalent to the conditions of the work permit granted under the former Act; and (d) allowing travel to New Zealand— (i) within the period or until the date specified in the work visa issued under the former Act; or (ii) for the number of journeys specified in the work visa issued under the former Act and within the period or until the date specified in that visa
Limited purpose permit only	Limited visa— (a) allowing stay in New Zealand only for the period or until the date specified in the limited purpose permit granted under the former Act; and (b) only for the purpose for which the limited purpose permit granted under the former Act was granted; and (c) subject to conditions equivalent to the conditions of the limited purpose permit granted under the former Act
Limited purpose permit and limited purpose visa	Limited visa— (a) allowing stay in New Zealand only for the period or until the date specified in the limited purpose permit granted under the former Act; and (b) only for the purpose for which the limited purpose permit granted under the former Act was granted; and (c) subject to conditions equivalent to the conditions of the limited purpose permit granted under the former Act; and (d) allowing travel to New Zealand— (i) within the period or until the date specified in the limited purpose visa issued under the former Act; or (ii) for the number of journeys specified in the limited purpose visa issued under the former Act and within the period or until the date specified in that visa
Temporary permit granted for the purposes of the Mutual Assistance in Criminal Matters Act 1992	Limited visa— (a) deemed to be granted under section 72 of this Act; and

Visa or permit held under former Act	**Visa holder is deemed to hold under this Act**
	(b) allowing stay in New Zealand only for the period or until the date specified in the temporary permit granted under the former Act; and
	(c) for the purpose for which the temporary permit granted under the former Act was granted; and
	(d) subject to conditions equivalent to the conditions of the temporary permit granted under the former Act

Reprints notes

1 General

This is a reprint of the Immigration Act 2009 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

4 Amendments incorporated in this reprint

Enhancing Identity Verification and Border Processes Legislation Act 2017 (2017 No 42): section 30

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

Intelligence and Security Act 2017 (2017 No 10): sections 266–279, 335

Contract and Commercial Law Act 2017 (2017 No 5): section 347

Judicial Review Procedure Act 2016 (2016 No 50): section 24

Senior Courts Act 2016 (2016 No 48): section 183(b)

Immigration Amendment Act 2015 (2015 No 48)

Immigration Amendment Act 2013 (2013 No 39)

Education Amendment Act 2013 (2013 No 34): section 45

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Legislation Act 2012 (2012 No 119): section 77(3)

Immigration Act 2009 Commencement Order 2012 (SR 2012/197)

Criminal Procedure Act 2011 (2011 No 81): section 413

Immigration Amendment Act 2011 (2011 No 39)

Immigration Act 2009 Commencement Order 2011 (SR 2011/316)

Immigration Act 2009 Commencement Order (No 2) 2010 (SR 2010/410)

Immigration Act 2009 Commencement Order 2010 (SR 2010/185)

Immigration Act 2009 Amendment Act 2010 (2010 No 10)

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